Supreme Court, U.S.
FILED

01135 2 MAR -6 2002

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No. _____

In the

Supreme Court of the United States

GENERAL MOTORS CORPORATION AND DAIMLERCHRYSLER CORPORATION,

Petitioners,

v.

CITY OF SEATTLE,

Respondent.

On Petition For A Writ Of Certiorari To The Washington Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does a tax on selling activities, imposed on the entire gross receipts from sales in which only a minuscule fraction of those activities occur within the taxing jurisdiction, violate the Commerce Clause requirement that taxes be fairly apportioned to (1) prevent the taxation of value created by activities conducted outside the taxing jurisdiction and (2) protect against multiple taxation?

PARTIES

Pursuant to Rule 14.1(b) the following list identifies all of the parties to the proceeding in the Washington Court of Appeals, whose judgment is sought to be reviewed.

Appellants below: General Motors Corporation ("GM") and DaimlerChrysler Corporation f/k/a Chrysler Corporation ("Chrysler").

Respondent below: City of Seattle, Finance Department ("Seattle" or the "City").

The Rule 29.6 list of petitioners' parents and subsidiaries is set forth in Appendix H at 65a to 99a.

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PETITION FOR WRIT OF CERTIORARI

Petitioners, GM and Chrysler (collectively, the "Automakers"), respectfully request the Court to issue a Writ of Certiorari to review the opinion of the Washington Court of Appeals in this case.

OPINIONS BELOW

The opinion of the Washington Court of Appeals, reported at 107 Wash. App. 42, 25 P.3d 1022, is set forth in Appendix A at 1a to 21a. The orders of the Superior Court for King County are set forth in Appendices B and C at 22a to 31a. The findings and decisions of the Seattle Hearing Examiner are set forth in Appendices D and E at 32a to 57a. The order of the Washington Supreme Court denying review is set forth in Appendix F at 58a.

JURISDICTION

The Washington Court of Appeals issued its opinion on May 7, 2001. The Washington Supreme Court denied review of the Court of Appeals' opinion on December 6, 2001. That order became the decision terminating review on December 26, 2001. The Court has jurisdiction to issue a Writ of Certiorari under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Commerce Clause of the Constitution of the United States (art. I, § 8, cl. 3) is set forth in Appendix G

(along with the pertinent provisions of the Seattle Municipal Code and the Seattle Business Tax Rules) at 60a to 64a.

STATEMENT OF THE CASE

This petition seeks review of a state court decision denying the Automakers relief from a tax imposed on their entire gross receipts from sales in which virtually all the activities being taxed by Seattle were conducted outside the City. The constitutional issue presented is being monitored closely by other cities, as a precedent to justify imposing their own taxes on revenue earned outside their jurisdictions.

Seattle's Tax Scheme.

The City of Seattle taxes the gross receipts from engaging in selling activities, wherever performed, if any part of any of the activities occurred within the City. Seattle Code § 5.44.400C, App. 60a. The tax is imposed on the entire gross income from all sales related to any selling activities in the City "without regard to the place of delivery" of the goods sold. *Id.* at 61a.

Seattle's regulations specify a nonexclusive list of nearly a dozen selling activities, any one of which, will trigger the City's tax, including: soliciting orders within the city "whether or not such orders are accepted within the city"; maintaining a sales office, warehouse, distribution house, inventory, or stock of goods within the city;

negotiating sales; making offers; accepting orders; investigating, or approving credit within the city; entering into contracts; and passing title, or receiving the purchase price within the city. Seattle Tax Reg. § 5-44-002(3), App. 62a-63a. In addition to these traditional selling activities, the regulations provide that any activity "assisting in a sale" constitutes a taxable selling activity. *Id.* at 63a.

The Automakers' Activities.

The Automakers sell vehicles at wholesale to dealers throughout the world, including dealers located in Seattle. Findings of Fact ("FF") ¶ 2, App. 33a, 46a.

Virtually all of the Automakers' selling activities, including their activities with respect to purchases by Seattle dealers, are performed outside Seattle. None of the specific selling activities identified in Seattle's regulations occur in Seattle; all of them are performed in other jurisdictions (and other states) which are entitled to tax them.

The Automakers have no offices or other places of business in Seattle, and have no employees or other representatives based in Seattle. FF ¶ 8, App. 34a, 47a. Seattle admits that the Automakers do not solicit sales in Seattle. GM Tr. 36, lines 15-16; Chry. Tr. 24, lines 10-14. The activities of receiving orders, investigating credit, approving credit, accepting orders, receiving payment,

and passage of title all occur outside Seattle. 25 P.3d at 1024, App. 2a;[1] GM Exh. 2; Chry. Exhs. 2-3.

The Automakers' only activities in Seattle are periodic visits by representatives. These traveling representatives do not solicit, write, or accept orders for vehicles, and "have no authority or ability to obtain additional allocations of popular vehicles for a dealership." FF ¶¶ 11, 15 (GM), 14 (Chry.), App. 35a, 36a, 47a-48a. The representatives' activities are limited to clarifying information the dealers received electronically and by mail regarding promotions and products. Moreover, most of the representatives' contact with dealers is by telephone, done at the Automakers' offices outside Seattle. *See* GM Tr. 119, lines 2-4. The cost of the periodic visits to Seattle by transitory representatives was less than two-tenths of one percent (0.2%), "a tiny fraction" of the value of the Automakers' sales to Seattle dealers. FF ¶ 21, App. 37a.

Proceedings Below.

Although the Automakers have been selling vehicles to Seattle dealers for the better part of a century, Seattle did not assert that the Automakers were subject to Seattle tax until 1996, when it assessed taxes going back 10 years. The tax was assessed on the Automakers' entire gross receipts from purchases by Seattle dealers, even though virtually all of the Automakers' selling activities with respect to those sales were performed outside Seattle. The

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[1] The Court of Appeals also noted the vehicles are sold "f.o.b. factory" with the result that delivery also occurs outside Seattle. *Id.*

Automakers appealed the assessments on the grounds that the assessments violate the Commerce Clause. At the hearing, the City admitted that the activities giving rise to Seattle's tax are conducted in more than one jurisdiction.

> Q. . . . [C]ouldn't we agree that . . . some of those wholesaling activities are also occurring in another jurisdiction?
>
> A. That's true.

Chry. Tr. 51, lines 21-25. The City also admitted that it does not apportion its selling activities tax among the other jurisdictions in which the specified activities are performed. GM Tr. 64, lines 3-6.[2]

Nevertheless, Seattle's Hearing Examiner denied the appeal, concluding that the Automakers' constitutional argument regarding apportionment, while persuasive, was an issue "for the Supreme Court to decide." Conclusions of Law, ¶ 14, App. 44a, 56a. The Superior Court likewise deferred consideration of the Automakers' apportionment claim to a higher tribunal, characterizing the Court's decisions on apportionment as "not yet the law in Washington." App. 25a, 30a. The Court of Appeals summarily upheld Seattle's tax, claiming that "Supreme Court precedent holds that business and occupation tax

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[2] Q. And is there any provision within the code that allows for apportionment of the wholesale sales?

A. No. . . . essentially it's a gross receipts tax on the total cost of the sale.

measured by gross receipts on wholesale sales is inherently apportioned." 25 P.3d at 1024, App. 2a.[3]

REASONS FOR GRANTING THE PETITION

The Court should grant certiorari because the state court decided a nationally important issue of federal constitutional law in direct conflict with the governing decisions of the Court. Rule 10(c). The Washington court's decision is also in conflict with other state courts that have applied the Court's apportionment jurisprudence to similar city taxes. Rule 10(b). Washington's disregard of one of the Court's fundamental principles of Commerce Clause jurisprudence establishes a dangerous precedent for other jurisdictions to impose similarly unapportioned taxes, extending their taxing power to activities conducted outside their borders and subjecting taxpayers to the risk of multiple taxation.

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[3] The Automakers had asserted below that they do not have sufficient nexus with Seattle to be subject to the City's taxing jurisdiction. Even if there is sufficient nexus with Seattle, the Automakers' extremely limited, transitory contact with the City makes the need for fair apportionment even more critical. *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 626 (1981) (while nexus is a "threshold test" to determine if there is sufficient contact to impose "*any* tax," the Commerce Clause imposes the "additional limitation that the *measure* of the tax must be reasonably related to the extent of the contact, since it is the activities or presence of the taxpayer in the State that may properly be made to bear a 'just share of state tax burden' ") (quoting *Western Live Stock v. Bureau of Revenue*, 303 U.S. 250, 254 (1938)).

I. THE STATE COURT'S OPINION DIRECTLY CONFLICTS WITH THE COURT'S DECISIONS REQUIRING THAT STATE AND LOCAL TAXES MUST BE FAIRLY APPORTIONED.

For more than 125 years, the Court has held that the Commerce Clause limits state and local taxing power. *Case of State Freight Tax*, 82 U.S. (15 Wall.) 232 (1873). A key component of the Commerce Clause protection is the requirement that taxes be fairly "apportioned to the value of the activities occurring within the State upon which the Tax is imposed." *Maryland v. Louisiana*, 451 U.S. 725, 756 (1981).

There are two basic principles behind the longstanding Commerce Clause requirement that taxes be fairly apportioned: (1) to prevent taxation of extraterritorial activities, *ASARCO Inc. v. Idaho State Tax Comm'n*, 458 U.S. 307, 315 (1982) (a local government "may not tax value earned outside its borders"), and (2) to prevent multiple taxation, *Container Corp. of Am. v. Franchise Tax Bd.*, 463 U.S. 159, 185 (1983) ("consistent application of the fair apportionment standard can generally mitigate, if not eliminate, double taxation").

Thus, the Court has sustained taxes as fairly apportioned when they are imposed on a single, indivisible activity occurring entirely within the taxing jurisdiction. *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 190 (1995) ("no other State can claim to be the site of the" taxable activity); *Tyler Pipe Indus., Inc. v. Washington Dep't of Revenue*, 483 U.S. 232, 251 (1987) (challenged tax was limited to activity "conducted wholly within Washington

that no other State has jurisdiction to tax").[4] The Court has invalidated taxes, for lack of apportionment, when they are imposed on multiple activities capable of being conducted in more than one jurisdiction. *Central Greyhound Lines, Inc. v. Mealey*, 334 U.S. 653, 660, 662 (1948) (because it would be "pure fiction" to suggest that taxable activities are confined to New York, "to allow New York to impose a tax on the [entire] gross receipts . . . would subject interstate commerce to the unfair burden of being taxed as to portions of its revenue by . . . a State which does not" protect the activity generating that revenue); *Gwin, White & Prince, Inc. v. Henneford*, 305 U.S. 434, 438 (1939) (because "a substantial part of [the taxed activity] is outside the state where sales are negotiated and written contracts of sale are executed, and where deliveries and collections are made[,] . . . the tax, though nominally imposed upon appellant's activities in Washington, by the very method of its measurement reaches the entire interstate commerce service rendered both within and without the state").

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[4] The Court, while rejecting an apportionment challenge in *Tyler Pipe*, nevertheless held that the Washington tax violated the Commerce Clause. 483 U.S. at 253. Scholars have noted that invalidating the tax on apportionment grounds would have more directly confronted the constitutional defects in the tax. Walter Hellerstein, Michael J. McIntyre & Richard D. Pomp, *Commerce Clause Restraints on State Taxation after Jefferson Lines*, 51 TAX. L. REV. 47, 99 (1995) ("If the Washington taxes were properly apportioned, all of the defects identified by the Court would disappear.").

The state court, however, reverted to the formalism this Court expressly rejected when it ushered in the modern era of Commerce Clause jurisprudence in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977). The state court said it upheld Seattle's tax because "a tax on the gross receipts of wholesaling activities is inherently apportioned." 25 P.3d at 1031, App. 20a. Contrary to the state court's assertion, the Court has long held that gross receipts taxes are subject to the same apportionment standard as other taxes:

> Taxation measured by gross receipts from interstate commerce has been sustained when fairly apportioned to the commerce carried on within the taxing state and in other cases has been rejected only because the apportionment was found to be inadequate or unfair.

Western Live Stock, 303 U.S. at 256 (citations omitted). The state court then compounded the problem, attempting to justify its result by asserting "*Central Greyhound* and *Jefferson Lines* involved taxes on the sales of services as distinguished from a sale of goods." 25 P.3d at 1031, App. 20a-21a. In *Jefferson Lines*, however, the Court rejected the suggestion that different apportionment principles apply to sales of goods and sales of services, basing its decision on whether tax was imposed on a unique local event precluding multiple taxation. *Jefferson Lines*, 514 U.S. at 188-91.[5] Rather, *Jefferson Lines* emphasized the

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[5] The Court took great care to explain that it reached exactly opposite conclusions in *Jefferson Lines* and *Central Greyhound* because the two taxes:

transactional nature of sales taxes in contrast with income and other business taxes, holding that a gross receipts tax is "simply a variety of tax on income, which [is] required to be apportioned to reflect the location of the various interstate activities by which it [is] earned." *Id.* at 190. Thus, the Court distinguished the sales tax at issue in *Jefferson Lines* from the gross receipts tax at issue in *Central Greyhound*.

The same difference exists between Seattle's tax and the Washington tax at issue in *Tyler Pipe*. Washington's business and occupation tax on wholesale sales is imposed on a single, specific sales event – delivery within the State of Washington. Wash. Rev. Code § 82.04.270; Wash. Admin. Code § 458-20-103.[6] As the Court has explained, a tax based on such a "single, inseparable"

> diverge crucially in the . . . opportunities that are understood to exist for multiple taxation. . . . *Central Greyhound* . . . rest[ed] . . . on the Court's express understanding that [it] was exposed to taxation by New Jersey and Pennsylvania on portions of the same receipts that New York was taxing in their entirety. . . . Here, in contrast . . . no other State can claim to be the site of the same [taxable activity]. . . . In sum, the sales taxation here is not open to the double taxation analysis on which *Central Greyhound* turned. . . .

Jefferson Lines, 514 U.S. at 190-91.

[6] As Seattle admits:

> Seattle has not adopted the equivalent of Washington's WAC 458-20-103 [to provide] that a sale takes place in Seattle only when the goods are delivered here.

Answer to Petition for Review at 8.

event is inherently apportioned because goods are "not imagined ever to be delivered in two States at once." *Jefferson Lines*, 514 U.S. at 187. Seattle's business and occupation tax on selling activities, in contrast, is like the Washington tax the Court struck down in *Gwin, White & Prince*. Seattle's tax is imposed on any one or more of nearly a dozen activities. *See infra* p. 2. The Washington business and occupation tax at issue in *Gwin, White & Prince* was also imposed on a variety of activities, including many of the same activities as Seattle's tax: "negotiat[ing] sales[,] . . . execut[ing] written contracts of sale, effect[ing] delivery of the shipments to purchasers, collect[ing] the purchase price," etc. 305 U.S. at 436. Here, as in *Gwin, White & Prince*,

> the tax, measured by the entire volume of the interstate commerce in which appellant participates, is not apportioned to its activities within the state.

Id. at 439.

Thus, the Washington court's decision conflicts with this Court's decisions, defining the constitutional requirement of fair apportionment, by failing to address (a) Seattle's taxation of activities conducted outside its jurisdiction and (b) the resulting risk of multiple taxation. By ignoring these fundamental elements of fair apportionment, the decision below directly conflicts with the Court's decisions.

II. THE WASHINGTON COURT'S DECISION CONFLICTS WITH DECISIONS OF OTHER STATES REQUIRING FAIR APPORTIONMENT OF SIMILAR CITY TAXES.

The decision below also conflicts with the decisions of other states' courts, including those of Virginia, California, and Alabama. In fact, the decision below creates an inconsistency among states in their treatment of one of the Petitioners before the Court.

The Supreme Court of California has declared an indistinguishable city tax unconstitutional because it was not fairly apportioned. *General Motors Corp. v. City of Los Angeles*, 486 P.2d 163 (Cal. 1971). Los Angeles, like Seattle in this action, imposed a gross receipts tax on the privilege of engaging in selling activities within the city. Los Angeles, again like Seattle, asserted tax on the entire gross receipts from GM's wholesale sales to dealers located in the city. As in the present case, GM conducted numerous selling activities outside the city that generated its sales to city dealers.[7]

The California Supreme Court held that Los Angeles' taxation of the entire gross receipts from sales to city dealers was not fairly apportioned because it taxed values created outside the city. *General Motors*, 486 P.2d at

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[7] GM engaged in a much greater level of activity in Los Angeles than it did in Seattle. GM maintained a "zone office" in Los Angeles where vehicle orders from Los Angeles dealers were received and forwarded to the manufacturing plant for acceptance. 486 P.2d at 165-66. In the present case, dealers transmit their orders directly to the Automakers' headquarters offices in Michigan. FF ¶ 9, App. 35a, 47a.

170-71 (the "inclusion of *unapportioned* gross receipts within the tax base results in the taxation of significant extraterritorial values . . . [and] must be apportioned in a manner which fairly reflects the proportion of in-city to out-of-city selling activities"). The California Supreme Court reaffirmed its *General Motors* decision in *Volkswagen Pac., Inc. v. City of Los Angeles*, 496 P.2d 1237, 1245 (Cal. 1972):[8]

> Appellants must, however, prevail in their contention that the Los Angeles tax as administered is invalid in that it includes within its measure receipts not attributable to activity within the city. . . .
>
> Respondent city included within the measure of tax assessed against appellants the gross receipts from all sales made by them to dealers located in Los Angeles . . . [although] the major portion of selling activity which eventually results in delivery of automobiles to dealers in Los Angeles occurs outside the city.

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[8] The California court has explained that these decisions

> can be traced to numerous and varied cases wherein the United States Supreme Court has insisted . . . that state taxes on interstate enterprises be fairly apportioned in order to prevent multiple tax burdens on such enterprises.
>
> [I]n cases involving gross receipts taxes on interstate enterprises, the Court has held that the commerce clause requires apportionment of the tax if the activities giving rise to the gross receipts occurred in more than one state.

City of Los Angeles v. Shell Oil Co., 480 P.2d 953, 959 (Cal. 1971) (citing, inter alia, *Gwin, White & Prince*, 305 U.S. 434).

Seattle's Director of Revenue admitted that Seattle, like Los Angeles, imposes its selling tax on revenue from selling activities performed in other jurisdictions. Chry. Tr. 51, lines 21-25. On its face, the Seattle tax applies to the entire value created by all the delineated selling activities, when only one of those activities occurs in Seattle, and does not apportion the income even though all the other revenue-generating activities taxed by Seattle occur elsewhere. Thus Seattle's tax, like Los Angeles', is not fairly apportioned; it is taxing selling activities occurring outside its borders.

Other state courts also have recently struck down, for lack of apportionment, city taxes that were imposed on gross receipts derived from activities conducted both within and outside the taxing jurisdiction. *M & Associates, Inc. v. City of Irondale*, 723 So. 2d 592 (Ala. 1998); *City of Winchester v. American Woodmark Corp.*, 471 S.E.2d 495 (Va. 1996).

In both *Irondale* and *Winchester*, the cities asserted tax on the taxpayers' entire gross receipts related to the activities conducted at their headquarters, which were located in the city. *Irondale*, 725 So. 2d at 594; *Winchester*, 471 S.E.2d at 498 ("The City contends that . . . Woodmark['s] headquarters contributes value to its business. [Therefore,] all the taxpayer's gross receipts are in some way attributable to the headquarters office."). In each case, the state supreme court, citing *Jefferson Lines* (and others), held that the taxation of the entire gross receipts from sales that were derived from activities conducted both within and outside the city violated the Commerce Clause requirement that the taxes be fairly apportioned. *Irondale*, 723 So. 2d at 598 ("Based on these statements in

Gwin, White & Prince, we conclude that the license tax . . . does not satisfy the 'fair apportionment' part of the *Complete Auto Transit* test and, therefore, violates the Commerce Clause."); *Winchester*, 471 S.E.2d at 498 ("assessments based on 100% of American Woodmark's revenues included revenues realized from value produced in locations other than in the taxing jurisdiction").

As demonstrated above, the Washington court's published opinion, permitting Seattle to tax the unapportioned revenues from these out-of-state selling activities, conflicts with decisions of both this Court and the courts of other states. As is shown below, the conflict relates to a significant constitutional question of substantial public importance.

III. THIS CASE PRESENTS A CONSTITUTIONAL ISSUE OF SIGNIFICANT PUBLIC IMPORTANCE.

In successfully seeking publication of the Washington court's opinion, Seattle asserted that the opinion addresses "the significant and recurring [question of] apportionment in regard to the taxation of interstate businesses." Motion to Publish at 3. Seattle also repeatedly emphasized the importance of this case, including the precedential impact it will have on other pending cases involving Seattle, Tacoma and the 33 other Washington cities that impose local business taxes. *Id.* at 2, 6.

The impact of the decision below, and the harm of unconstitutional city taxes like Seattle's, are national in scope – not confined to cities in "the other Washington." The State of Washington has identified more than 55 cities across the country that impose similar gross receipts

taxes, including Philadelphia, Atlanta, San Francisco, Pittsburgh and St. Louis, as well as the Los Angeles tax that the California court held was not fairly apportioned, and many other city taxes in Alabama, California, Missouri, South Carolina, Virginia, and West Virginia. Wash. Dep't of Rev. Excise Tax Advisory 543.04.19301.

To prove the importance of the constitutional issue, Seattle filed a declaration on behalf of the City of Tacoma, emphasizing the importance of this case for other cities. The declaration discusses the role of the state court's opinion in "the development of law justifying taxation" and emphasized that the opinion addresses an "increasingly important point of law." *Id.* The cities persuaded the state court to publish its opinion so other cities can rely on it as binding precedent in cases involving other taxpayers. Wash. Rev. Code § 2.06.040; Wash. Rules of App. Proc. 10.4(h).

If left uncorrected, the Washington decision will be used by other cities to justify the imposition of unapportioned taxes, extending their taxing power outside their borders and subjecting other taxpayers to the risk of multiple taxation.[9]

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[9] Despite its recency, the case has already been cited by one state in support of imposing a gross receipts tax on an out-of-state taxpayer. *Kmart Properties, Inc. v. Tax'n & Revenue Dep't*, Docket No. 21140 (N.M. Ct. App. 2001). At least one commentator has noted that the case puts Washington at the leading edge of state and local efforts to expand their taxing powers. Arthur R. Rosen & Melissa Connell, *State Tax Nexus Issues – The Decades Old Debate Continues in the Shadow of the Internet*, 95 J. TAX'N 303, 306 (2001).

CONCLUSION

For the reasons set forth above, the Automakers respectfully request that the Court grant certiorari to review the Washington Court of Appeals decision.

Respectfully submitted,

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March 6, 2002

APPENDIX A

107 Wash.App. 42

GENERAL MOTORS CORPORATION, Appellant,

v.

CITY OF SEATTLE, Finance Department and City of Seattle, Office of the Examiner, Respondents.

Chrysler Corporation, Appellant,

v.

City of Seattle, Finance Department and City of Seattle, Office of the Examiner, Respondents.

Nos. 46152-4-I, 47562-2-I, 47561-4-I.

Court of Appeals of Washington, Division 1.

May 7, 2001.

Publication Ordered June 11, 2001.

Steven L. Gross, City of Seattle Law Department, Cynthia Unwin Seu, Seattle, for Respondents.

Scott M. Edwards, John Thomas Piper, Perkins Coie, Seattle, for Appellants.

BAKER, J.

General Motors Corporation (GM) and Chrysler Corporation challenge the City of Seattle's jurisdiction to impose on them a business and occupation tax measured by their gross receipts on wholesale auto sales to Seattle dealers. They claim that their contacts with the City are

not sufficient to establish nexus under the federal Commerce Clause and alternatively, that the measure of tax is not fairly apportioned to the automakers' marketing activities within the City. Because their in-city advertising, sales/service calls, and marketing/service of warranties significantly impact the automakers' ability to maintain their market in Seattle, we hold that substantial nexus exists to impose the tax. Further, because well established Supreme Court precedent holds that business and occupation tax measured by gross receipts on wholesale sales is inherently apportioned, we affirm.

I

General Motors Corporation and Chrysler Corporation manufacture and sell automobiles and related parts and accessories to independent dealers located within the City of Seattle. Neither GM nor Chrysler maintains an office or bases any of their employees in the City. In fact, no direct solicitation of business occurs within the City. The automakers receive orders for autos and parts via computer, and the goods are shipped f.o.b.[1] factory via common carrier.

They do, however, conduct substantial marketing activities in Seattle. They send sales, service, and parts representatives on a monthly basis to visit their Seattle

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[1] "Free on board some location (for example, FOB shipping point; FOB destination). A delivery term which requires a seller to ship goods and bear the expense and risk of loss to the F.O.B. point designated. . . . Title to goods usually passes from seller to buyer at the FOB location." Black's Law Dictionary 642 (6th Ed.1990).

dealers. These representatives discuss market conditions with the dealers. They also impart information about new products and discuss retail customer satisfaction levels. The service representatives discuss problems that may be occurring with a certain make of automobile. They also make themselves available to speak with dissatisfied retail customers regarding product quality. GM employees make approximately 500 contacts per year to Seattle dealerships.

In addition, both GM and Chrysler direct national advertising to Seattle. Although the actual contract for advertising and ad preparation is performed outside the City, GM directs a portion of that advertising to the City in the sum of just under $6 million annually. Chrysler's advertising structure is similar.

The automakers' warranty program associated with the sales of new automobiles also serves a marketing function, because customers prefer to purchase automobiles with a warranty. The dealers market the availability of the warranties on behalf of the automakers and perform repair services for which they are paid by Chrysler and GM.

Chrysler requires its dealers to place large, permanent signs on dealership properties advertising Chrysler automobiles. Seattle dealers lease three of these signs from Chrysler. During the relevant audit period, GM also owned real property in Seattle, but it was not established that the property factored into the sales or marketing of GM products in any way.

During the years 1986-1995, Chrysler paid a business and occupation tax to the City of Seattle measured by the

gross receipts of its wholesale sales in the City. In like manner, the City assessed tax against GM for the years 1986-1998. Both GM and Chrysler appealed the assessments to the City's Department of Finance. The hearing examiner affirmed and the automakers sought review by the Superior Court of King County, which also affirmed.[2] The automakers appeal.

II

Judicial review of a hearing examiner's decision is authorized by statutory writ of review under RCW 7.16.[3] On review, we must determine whether any rule of law affecting the parties' rights has been violated to their prejudice and whether the factual determinations were supported by substantial evidence.[4] Because neither party disputes the findings of fact entered in this matter, they are verities on appeal[5] and our sole task is to determine whether the hearing examiner erred in applying the law to the facts as it found them.

GM and Chrysler first challenge the City's jurisdiction to impose a business and occupation tax by arguing that they do not engage in business activities as defined

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[2] The superior court remanded both matters back to the Department of Finance for determination of whether the activities in Seattle were dissociated with the interstate activity pursuant to SMC 5.44.422; however, the parties abandoned this claim and consolidated their actions in this appeal.

[3] SMC 5.44.120(D).

[4] RCW 7.16.120.

[5] *Stuewe v. Dep't of Revenue*, 98 Wash.App. 947, 950, 991 P.2d 634 (2000).

by Seattle Municipal Code 5.44. SMC 5.44.400 levies and collects a business and occupation tax from every person for the privilege of engaging in business activities within the City. The code defines the term "business" broadly to include "all activities engaged in with the object of gain, benefit or advantage to the taxpayer . . . directly or indirectly."[6] "Engaging in business" is further defined as "commencing, conducting or continuing in business and includes any business activity . . . whereby employees . . . solicit sales, enter into contracts, deliver products or services, perform other business activities, endeavor to maintain a share of the market within the City, or the business entity avails itself of the benefits of an economic market in the City."[7]

The activities of GM and Chrysler within the City plainly fall within these broad definitions. Although they may not be characterized as direct selling activities, they nevertheless constitute "other business activities" that are designed to assist the automakers in "maintain[ing] a share of the market within the City." The automakers' reliance on the former Seattle Business Tax Rule (SBTR) 2 in effect during the relevant period does not assist them.[8] Although the rule listed examples of business activities that did not include the automakers' activities, it concluded with the proviso that the examples were illustrative only and that the list was not all-inclusive. We are

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[6] SMC 5.44.022(1).

[7] SMC 5.44.022(8).

[8] Rule 2 was amended and redesignated SBTR 5-44-102 in 1997, expanding the non-exclusive list of what constitutes "engaging in business."

satisfied that the automakers "avail [themselves] of an economic market" within the City.

The automakers next combine a statutory construction argument with a constitutional nexus challenge. They claim that their activities within the City do not satisfy "statutory nexus" under SMC 5.44.422, the language of which parallels the rule for determining nexus under Commerce Clause analysis. They then proceed to argue a constitutional nexus argument. The City argues that the section is merely a tool by which to measure tax due. Both parties are correct.

SMC 5.44.422 requires that taxpayers that have no place of business within the City, but nevertheless engage in wholesale sales within the City, allocate to Seattle for tax purposes:

> [T]he gross proceeds of all sales in which the taxpayer's business activity within the City is either a determining element in the transaction or, under the facts and circumstances, a significant factor in making or holding the market here. Mere delivery of goods, without accompanying efforts to maintain an economic market, shall not constitute a determining element in affecting a transaction.[9]

Under Commerce Clause analysis, "the crucial factor governing nexus is whether the activities performed in [the] state on behalf of the taxpayer are significantly associated with the taxpayer's ability to establish and maintain a

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[9] SMC 5.44.422(A).

market in [the] state[10] for the sales."[11] Thus, while the code section certainly operates as an instrument of measure by which to determine tax due, as the automakers contend, the section effectively sets forth the constitutional test for Commerce Clause nexus as well. Because one analysis will resolve both the constitutional issue and the automakers' statutory obligations under SMC 5.44.422(A), we proceed to review the automakers' challenges under the federal Commerce Clause.

III

The United States Constitution grants to Congress the power to "regulate Commerce . . . among the several States."[12] Within that express grant is a negative command, commonly known as the "dormant Commerce Clause," which prohibits a State from imposing any tax that discriminates against interstate commerce or out-of-state economic interests.[13] It is not the purpose of the Commerce Clause "to relieve those engaged in interstate commerce from their just share of state tax burden even

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[10] Although the City of Seattle is a municipality and not a state, most discussions of the Commerce Clause materials refer to a "State's" power to tax. Consequently, our use of the term "State" herein shall apply equally to the City.

[11] *Tyler Pipe Indus., Inc. v. Wash. State Dep't of Revenue*, 483 U.S. 232, 250, 107 S.Ct. 2810, 97 L.Ed.2d 199 (1987).

[12] *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179, 115 S.Ct. 1331, 131 L.Ed.2d 261 (1995) (citing U.S. Const., Art. I, § 8, cl.3).

[13] *Jefferson Lines*, 514 U.S. at 179, 115 S.Ct. 1331.

though it increases the cost of doing the business."[14] But it is essential that each State taxes "only its fair share of an interstate transaction."[15]

In *Complete Auto Transit, Inc. v. Brady,* the United States Supreme Court held that a state tax would withstand a challenge under the Commerce Clause if 1) it is applied to an activity with a substantial nexus with the taxing State; 2) it is fairly apportioned; 3) it does not discriminate against interstate commerce; and 4) it is fairly related to the services provided by the State.[16] The automakers in this case challenge the City's jurisdiction to tax under prongs 1 and 2 of the *Complete Auto* test.

The automakers first argue that their activities within the City are not sufficient to constitute substantial nexus under the Commerce Clause. In *Tyler Pipe Industries, Inc. v. Washington State Department of Revenue,* the Supreme Court approved the Washington Supreme Court's test for nexus in the context of business and occupation taxes as follows:

> [The] crucial factor governing nexus is whether the activities performed in this state on behalf of the taxpayer are significantly associated with the taxpayer's ability to establish and maintain a market in this state for the sales.[17]

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[14] *Jefferson Lines,* 514 U.S. at 182, 115 S.Ct. 1331 (citing *Western Live Stock v. Bureau of Revenue,* 303 U.S. 250, 254, 58 S.Ct. 546, 82 L.Ed. 823 (1938)).

[15] *Jefferson Lines,* 514 U.S. at 184, 115 S.Ct. 1331.

[16] 430 U.S. 274, 279, 97 S.Ct. 1076, 51 L.Ed.2d 326 (1977).

[17] *Tyler Pipe,* 483 U.S. at 250, 107 S.Ct. 2810.

Tyler Pipe was an out-of-state manufacturer that made wholesale sales to companies within Washington State.[18] It maintained no office, owned no property, and based no employees in the State of Washington.[19] Solicitation of business was made by an independent contractor located in the State and by executives who resided out of State.[20]

The Court upheld nexus on these facts, noting that through its representative, Tyler Pipe maintained and improved its name recognition, market share, goodwill, and individual customer relations.[21] In addition, Tyler Pipe's representative provided the company with virtually all of its information regarding product performance, competing products, pricing, market conditions and trends, and other critical information concerning Tyler Pipe's Washington market.[22] The Court dismissed Tyler Pipe's distinction that its in-state representative was an independent contractor versus an employee as having no constitutional significance.[23]

In this case, both GM and Chrysler direct national advertising to the City of Seattle. They send sales, service, and parts managers to their dealers in Seattle on a monthly basis to discuss market conditions, new products, retail customer satisfaction levels, and the like. These representatives speak with dissatisfied customers

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[18] *Tyler Pipe*, 483 U.S. at 249, 107 S.Ct. 2810.

[19] *Tyler Pipe*, 483 U.S. at 249, 107 S.Ct. 2810.

[20] *Tyler Pipe*, 483 U.S. at 249, 107 S.Ct. 2810.

[21] *Tyler Pipe*, 483 U.S. at 249-50, 107 S.Ct. 2810.

[22] *Tyler Pipe*, 483 U.S. at 250, 107 S.Ct. 2810.

[23] *Tyler Pipe*, 483 U.S. at 249-50, 107 S.Ct. 2810.

and discuss problems that may be occurring with certain makes of automobiles. The representatives also train the dealers in sales and management techniques. Finally, the Seattle dealers actively market the automakers' warranties that accompany the sale of an automobile and make service repairs at the dealerships in Seattle on behalf of the automakers. These warranties serve an important marketing function because customers are unlikely to purchase a new vehicle without a warranty.

Although the automakers place great emphasis on the fact that they engage in no direct selling activities in Seattle, substantial nexus has never turned on this distinction. In *Standard Pressed Steel Company v. Washington Department of Revenue*,[24] the Supreme Court upheld nexus where the taxpayer conducted no selling activities within the State. It maintained its home office and manufacturing plant outside Washington, and its only contact with the State was one in-state employee who worked out of his home and several out-of-state engineers who visited The Boeing Company every six weeks.[25] The in-state employee was an engineer who consulted with Boeing regarding its needs and followed up on any difficulties Boeing had in the use of Standard's product after delivery.[26] He was also instrumental in obtaining and retaining goodwill and rapport with Boeing personnel.[27] All purchase orders were sent directly to Standard at its home office.

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[24] 419 U.S. 560, 95 S.Ct. 706, 42 L.Ed.2d 719 (1975).

[25] *Standard Pressed Steel*, 419 U.S. at 561, 95 S.Ct. 706.

[26] *Standard Pressed Steel*, 419 U.S. at 561, 95 S.Ct. 706.

[27] *Standard Pressed Steel*, 419 U.S. at 561, 95 S.Ct. 706.

The Supreme Court characterized *Standard's* nexus challenge as "verg [ing] on the frivolous."[28] We note that although nexus was upheld on due process grounds and not on a Commerce Clause analysis, the Supreme Court has not overruled the case on this issue. We therefore continue to rely on its guidance.

The automakers' reliance on *City of Tacoma v. Fiberchem, Inc.*[29] is likewise misplaced. *Fiberchem* involved issues of intrastate commerce and relied on state constitutional due process law. The Commerce Clause of the federal constitution was not implicated. Moreover, the taxpayer in *Fiberchem* had no office in Tacoma, did not advertise in Tacoma, took no orders in Tacoma, and made no deliveries to Tacoma.[30] Its sole contact was one representative that made visits to Tacoma totaling 12 hours per month.[31] The contacts in this case far exceed the minimal contacts in *Fiberchem*.

We are satisfied that in this case, the collective activities of each automaker are strategically designed to maximize their sales within the City and that the absence of these activities would significantly affect their ability to maintain a share of the Seattle market. Without these activities, their name recognition, goodwill, ability to obtain market data, customer feedback, and trends unique to Seattle, and their ability to compete with other automakers would be adversely impacted. We hold that

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[28] *Standard Pressed Steel*, 419 U.S. at 562, 95 S.Ct. 706.

[29] 44 Wash.App. 538, 722 P.2d 1357 (1986).

[30] *Fiberchem*, 44 Wash.App. at 540, 722 P.2d 1357.

[31] *Fiberchem*, 44 Wash.App. at 540, 722 P.2d 1357.

substantial nexus exists to justify the City's imposition of its business and occupation tax upon the automakers.

The automakers argue that *Quill Corporation v. North Dakota*,[32] which post-dates *Tyler Pipe*, sets a new and higher standard for nexus that they do not meet. We disagree. In *Quill*, the Court struck down North Dakota's attempt to collect a use tax from an out-of-state mail order company on products sold to in-state residents. Because Quill maintained no physical presence within the State,[33] the Court held that substantial nexus was not satisfied to justify the burden of collecting a use tax.[34]

In its opinion, the Court acknowledged that "contemporary Commerce Clause jurisprudence might not dictate the same result were the issue to arise for the first time today . . . "[35] It nevertheless based its continued reliance on the physical presence test in the context of sales and use taxes because it provides a bright-line rule that encourages the "settled expectations" of the mail-order industry, whose "dramatic growth" over the previous quarter century has been likely because of this rule.[36] The Court was careful to note, however, that in its review of other types of taxes, it has not articulated the same physical presence requirement as stated for sales and use taxes.[37]

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[32] 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992).

[33] *Quill*, 504 U.S. at 315, 112 S.Ct. 1904.

[34] *Quill*, 504 U.S. at 311, 112 S.Ct. 1904.

[35] *Quill*, 504 U.S. at 311, 112 S.Ct. 1904.

[36] *Quill*, 504 U.S. at 316, 112 S.Ct. 1904.

[37] *Quill*, 504 U.S. at 314, 112 S.Ct. 1904.

The automakers correctly argue that some state courts after *Quill* have extended the physical presence rule. In *J.C. Penney National Bank v. Johnson*,[38] the Tennessee Supreme Court extended the physical presence rule in the context of franchise taxes imposed on an out-of-state corporation.[39] A franchise tax is a tax for the privilege of carrying on a business in the corporate form.[40] A State cannot impose such a tax on a foreign corporation engaging in interstate commerce, but may impose the tax only on the privilege of engaging in intrastate commerce.[41] It thus follows that a physical presence would be required in order for a taxing jurisdiction to levy such a tax.

In contrast, the South Carolina Supreme Court in *Geoffrey, Inc. v. South Carolina Tax Commission*,[42] declined to extend the physical presence requirement in the context of income and business license taxes. Geoffrey, Inc. was a wholly-owned, second-tier subsidiary of Toys R Us, Inc., based in Delaware with no employees or offices in South Carolina.[43] However, it owned the trademark and trade name of "Toys R Us," which it licensed for use in the

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[38] 19 S.W.3d 831, *cert. denied*, 531 U.S. 927, 121 S.Ct. 305, 148 L.Ed.2d 245 (2000).

[39] *J.C. Penney*, 19 S.W.3d at 839.

[40] Ronald D. Rotunda & John E. Nowak, *Treatise on Constitutional Law, Substance and Procedure*, § 13.5 at 391 (3d ed.1999).

[41] Rotunda & Nowak, *supra*, § 13.5 at 392-93.

[42] 313 S.C. 15, 437 S.E.2d 13, *cert. denied*, 510 U.S. 992, 114 S.Ct. 550, 126 L.Ed.2d 451 (1993).

[43] *Geoffrey*, 313 S.C. at 16, 437 S.E.2d 13.

State.[44] As a result of that use, it received a 1% royalty on the net sales of Toys R Us stores in the state and the state sought to tax it. In rejecting Geoffrey's assertion that physical presence was required, the court reasoned:

> Any corporation that regularly exploits the markets of a state should be subject to its jurisdiction to impose an income tax even though not physically present.[45]

The tax at issue here is neither a sales or use tax, nor is it a franchise tax. It is a business and occupation tax for the privilege of engaging in business within the City of Seattle.[46] The automakers certainly exploit the market in the City, regardless of where they are physically located. We decline to extend *Quill's* physical presence requirement in this context.

The automakers alternatively argue that Seattle's business and occupation tax is not fairly apportioned. The *Complete Auto* prong requiring fair apportionment ensures that "each State taxes only its fair share of an interstate transaction."[47] To prevent a State's overreaching, the Court has typically looked for the possibility of multiple taxation, "which is threatened whenever one State's act of overreaching combines with the possibility that another State will claim its fair share of the value taxed."[48] To this end, the Court applies a two prong test:

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[44] *Geoffrey*, 313 S.C. at 16, 437 S.E.2d 13.

[45] *Geoffrey*, 313 S.C. at 23, 437 S.E.2d 13, (citing J. Hellerstein & W. Hellerstein, State Taxation, Para. 6.08 (2d ed.1992)).

[46] SMC 5.44.400.

[47] *Jefferson Lines*, 514 U.S. at 184, 115 S.Ct. 1331.

[48] *Jefferson Lines*, 514 U.S. at 184, 115 S.Ct. 1331.

first, a determination of whether the tax is "internally consistent" and if so, then whether it is also "externally consistent."[49] The automakers argue that Seattle's business and occupation tax is not internally consistent.

A tax is internally consistent when the identical tax could be imposed in every other taxing jurisdiction and the resulting burden to interstate commerce would be no greater than the burden intrastate commerce would also bear.[50] The test focuses on the integrity of the structure of the tax, rather than to what degree the tax reflects economic reality.[51] Thus, in this test, the taxpayer need not prove that it is actually being subjected to multiple taxation in two jurisdictions. If the tax at issue fails the test of internal consistency, a State, as a matter of law, is attempting to take more than its fair share of taxes from an interstate transaction.[52]

In *Armco Inc. v. Hardesty*,[53] the Supreme Court struck down West Virginia's gross receipts tax as internally inconsistent where the State exempted in-state manufacturers from its wholesaling tax, but out-of-state manufacturers were required to pay it. Likewise, in *Tyler Pipe*, the Supreme Court held that Washington's B & O tax was internally inconsistent because it exempted in-state manufacturers subject to the State's wholesale tax from the State's manufacturing tax on the same item, but it did not

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[49] *Jefferson Liness*, 514 U.S. at 185, 115 S.Ct. 1331.

[50] *Jefferson Lines*, 514 U.S. at 185, 115 S.Ct. 1331.

[51] *Jefferson Lines*, 514 U.S. at 185, 115 S.Ct. 1331.

[52] *Jefferson Lines*, 514 U.S. at 185, 115 S.Ct. 1331.

[53] 467 U.S. 638, 104 S.Ct. 2620, 81 L.Ed.2d 540 (1984).

provide similar exemptions for out-of-state manufacturers. Thus, while in-state manufacturers were subject to only one tax, out-of-state manufacturers were subject to their own State's manufacturing tax and Washington's wholesaling tax.[54]

A careful review of Seattle's B & O tax demonstrates its soundness under the internal consistency test. SMC 5.44.400(C) provides:

> Upon every person engaging within the City in the business of making sales at wholesale . . . [shall be levied a tax for the privilege of engaging in business activities within the City] equal to the gross proceeds of such sales of the business without regard to the place of delivery of articles, commodities or merchandise sold . . .

The code goes on to provide that if a person subject to tax has no place of business within the City, that person shall allocate to the City "the gross proceeds of all sales in which the taxpayer's business activity within the City is either a determining element in the transaction or, under the facts and circumstances, a significant factor in making or holding the market here."[55] The automakers argue that if this ordinance were in effect both in Seattle and in Michigan, where their headquarters are located, both jurisdictions could tax their wholesale sales to Seattle. They reason that if, arguendo, their activities in Seattle are a significant factor in maintaining a market here, Seattle has jurisdiction to tax the sale. But because the

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[54] *Tyler Pipe*, 483 U.S. at 243, 107 S.Ct. 2810.

[55] SMC 5.44.422(A).

automakers allegedly negotiate the terms of the sale, investigate credit, accept orders, and receive the purchase price in Michigan, Michigan could conclude that those activities constitute a determining element of the sales transaction and thus, Michigan would also be able to tax the same wholesale sale.

Seattle Business Tax Rule 5-44-193A concerning "Outbound Interstate Selling Activity" lays those fears to rest. A reviewing court gives considerable deference to the construction of an ordinance by those officials charged with its enforcement.[56] SBTR 5-44-193A(3) states:

> Outbound sales. The City of Seattle does not assess its retailing or wholesaling taxes on the sale of goods which originate in the City if receipt of the goods by the purchaser or its agent occurs outside Washington.
>
> . . .
>
> (b) If the seller delivers goods to the purchaser who receives them at a point outside Washington, an interstate deduction may be taken under the retailing or wholesaling classification as applicable. *The interstate deduction applies even in cases where the shipment is arranged through a for-hire carrier or freight consolidator or freight forwarder acting on behalf of either the seller or purchaser.* [Emphasis added].

The examples in the rule illustrate the above provisions. If an out-of-state purchaser receives the goods out of state, regardless of whether it paid for shipping or not,

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[56] *Citizens for a Safe Neighborhood v. City of Seattle*, 67 Wash.App. 436, 440, 836 P.2d 235 (1992).

the transaction is an interstate sale qualifying for an interstate deduction.[57] Only if the out-of-state purchaser pays for shipping and authorizes the carrier or another agent to inspect and accept the goods in Washington is the sale taxable under the City's tax.[58] Thus, if Seattle's business tax were applied in Michigan, there is no possibility that the automakers would be subject to a wholesale tax there. We conclude that Seattle's business and occupation tax on wholesaling activities is internally consistent.

The automakers further argue that the tax is not externally consistent under the second prong under the fair apportionment analysis. External consistency looks:

> [N]ot to the logical consequences of cloning, but to the economic justification for the State's claim upon the value taxed, to discover whether a State's tax reaches beyond that portion of value that is fairly attributable to economic activity within the taxing State.[59]

They contend that because they conduct marketing activities in both Seattle and in Michigan, Seattle may not fairly tax 100 percent of the gross receipts on products sold to Seattle, but only that percentage of gross receipts that equals the percentage of marketing activities they conducted in Seattle relative to the sale.

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[57] SBTR 5-44-193A(6)(b).

[58] SBTR 5-44-193A(6)(d).

[59] *Jefferson Lines*, 514 U.S. at 185, 115 S.Ct. 1331.

This argument relies in large part on a law review article[60] published after the Supreme Court decided *Oklahoma Tax Commission v. Jefferson Lines, Inc.*[61] In *Jefferson Lines*, the State of Oklahoma imposed a sales tax on the purchase of bus tickets for interstate travel. Jefferson Lines challenged the tax, claiming that Oklahoma could not tax the whole price of the ticket when portions of its value were attributed to services rendered in other States. The Court rejected this argument and upheld the tax. It reasoned that because the tax burden rested on the buyer, there was no reasonable possibility of multiple taxation in other jurisdictions.[62]

In so holding, the Court distinguished a prior case, *Central Greyhound Lines, Inc. v. Mealey*,[63] in which the facts were identical except that the tax assessed was a gross receipts tax imposed on Central Greyhound, not a retail sales tax imposed on the buyer. In that case, the Court held that a gross receipts tax had to be apportioned based on the mileage occurring in each State.[64] The Court noted that "*Central Greyhound* did not rest simply on the mathematical and administrative feasibility of a mileage apportionment, but on the Court's express understanding that the seller-taxpayer was exposed to taxation by New Jersey and Pennsylvania on portions of the same receipts

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60 Walter Hellerstein et al., *Commerce Clause Restraints on State Taxation After Jefferson Lines*, 51 Tax L.Rev. 47 (1995).

61 514 U.S. 175, 115 S.Ct. 1331, 131 L.Ed.2d 261 (1995).

62 *Jefferson Lines*, 514 U.S. at 190, 115 S.Ct. 1331.

63 334 U.S. 653, 68 S.Ct. 1260, 92 L.Ed. 1633 (1948).

64 *Jefferson Lines*, 514 U.S. at 190, 115 S.Ct. 1331.

that New York was taxing in their entirety."[65] The difference was, then, that in the context of sales and use tax, there was no danger of multiple taxation, but because there was an evident danger in the gross receipts tax involved in *Central Greyhound*, apportionment was required.

The automakers have seized on this holding as now requiring the nature of the apportionment they advance. But well established precedent holds directly to the contrary. In *Tyler Pipe*,[66] the Supreme Court rejected Tyler Pipe's apportionment challenge by concluding that, "the activity of wholesaling – whether by an in-state or an out-of-state manufacturer – must be viewed as a separate activity conducted wholly within Washington that no other State has jurisdiction to tax."[67] A tax on the gross receipts of wholesaling activities is inherently apportioned.[68] This holding was recently upheld in *W.R. Grace & Co. – Conn. v. State Department of Revenue*[69] wherein the Washington Supreme Court characterized a similar argument as meritless.

Moreover, nothing in either *Central Greyhound* or *Jefferson Lines* stands for the particular argument the automakers advance. *Central Greyhound* and *Jefferson Lines*

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[65] *Jefferson Lines*, 514 U.S. at 190, 115 S.Ct. 1331.

[66] Counsel in this case, John T. Piper, served as counsel in *Tyler Pipe*, and is thus quite conversant with the issue and the Supreme Court's position on it.

[67] *Tyler Pipe*, 483 U.S. at 251, 107 S.Ct. 2810.

[68] Rotunda & Nowak, *supra*, § 13.6 at 411.

[69] 137 Wash.2d 580, 595, 973 P.2d 1011 (1999), *cert. denied*, 528 U.S. 950, 120 S.Ct. 371, 145 L.Ed.2d 290 (1999).

involved taxes on the sale of services as distinguished from a sale of goods. Unlike the sale of a good, the income from the sale of the service in *Central Greyhound* was necessarily earned after the sale by labor occurring in more than one State (i.e., mileage occurring in New York, Pennsylvania, and New Jersey). Thus, the Court held that the income from the sale of the service had to be apportioned among the States in which the labor was expended to perform the service.

In contrast, all the labor attributable to the creation of a good, namely manufacturing, occurs prior to the wholesale sale. The Court has held that manufacturing is a separate and distinct activity from wholesaling, and may be taxed separately.[70] It is this premise, not the automakers' argument, the authors in the law review article question in light of *Jefferson Lines*. Neither *Central Greyhound* nor *Jefferson Lines* held or implied that an apportionment of gross receipts based on marketing activities was required.

It is telling that the automakers have not alleged that they are effectively exposed to multiple taxation in this area. The Court in *Central Greyhound* was responding to that very possibility. The external consistency test looks at the real possibility of multiple taxation and the automakers in this case have not demonstrated it. We hold that Seattle's business and occupation tax is fairly apportioned.

AFFIRMED.

WEBSTER and AGID, JJ., concur.

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[70] *Tyler Pipe*, 483 U.S. at 251, 107 S.Ct. 2810.

APPENDIX B

Hon. Dean S. Lum

IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
FOR KING COUNTY

GENERAL MOTORS CORPORATION, Petitioner, vs. CITY OF SEATTLE, FINANCE DEPARTMENT and CITY OF SEATTLE, OFFICE OF THE HEARING EXAMINER, Respondents.	No. 98-2-15610-4 SEA ORDER ON WRIT OF REVIEW *Clerk's Action required*

This matter is before the Court on a Writ of Review issued June 26, 1998, for review of the Findings and Decision of the Hearing Examiner for the City of Seattle in the matter of an appeal by General Motors Corporation from a Business and Occupation Tax Assessment by the City of Seattle, Executive Services Department, Revenue and Consumer Affairs Section, Hearing Examiner File Nos. B-98-004 and B-98-006 (consolidated).

The above-entitled court, having heard the parties herein, petitioner being represented by its attorneys of record, Bogle & Gates PLLC, by John T. Piper and Scott M. Edwards, respondent being represented by its attorneys of record, Mark H. Sidran, Seattle City Attorney and

Steven L. Gross, Assistant City Attorney, having considered the Return on Writ of Review, the submissions of the parties, having heard oral argument thereon on January 15, 1999, and being otherwise fully informed in the premises, and pursuant to RCW 7.16.120, reaches the following Conclusions of Law regarding those matters before the Hearing Examiner:

1. The Hearing Examiner had jurisdiction over the subject matter of the determination under review;

2. The authority of the Hearing Examiner to hear an appeal of a business and occupation ("B&O") tax assessment by the City of Seattle, Executive Services Department, Revenue and Consumer Affairs Section, had been pursued in the mode required by law

3. The Hearing Examiner's determination that 1) the petitioner's activities in the City were sufficient to establish nexus for the City to subject petitioner to the City's B&O tax and 2) Seattle's Tax Code (Chapter 5.44 of the Seattle Municipal Code) did not allow petitioner to allocate its revenue based on a cost apportionment formula, was not in violation of the law;

4. Except as specifically set forth in this paragraph, there was sufficient proof of all the facts necessary to be proved in order for the Hearing Examiner to make his decision. The Court concludes that the Hearing Examiner's decision failed to calculate the amount of tax owed by the petitioner. The decision also failed to address whether petitioner presented specific evidence regarding

whether it was entitled to dissociate any of its activities within the City of Seattle from its interstate activities, as provided for in SMC 5.44.422, and to rule on the sufficiency of that evidence.

5. The Findings of the Hearing Examiner were supported by substantial evidence.

On review, petitioner raised issues regarding whether the City's Code as applied to the petitioner violated the Commerce Clause of the United States Constitution. These claims were outside the authority of the Hearing Examiner. Regarding petitioner's constitutional claims, the Court **adopts** the Hearing Examiner's Findings of Fact, and concludes as follows:

1. The petitioner's activities within the City were adequate to establish nexus under the Commerce Clause of the United States Constitution [and to come within the Seattle Municipal Code /s/ DSL]. Even if the activities of the petitioner's district sales managers are relatively insignificant, this insignificance is overwhelmed by the other activities of the petitioner, with particular emphasis on the petitioner's use of local dealers as the petitioner's agent to perform warranty work on the petitioner's behalf;

2. The sections of Chapter 5.44 of the Seattle Municipal Code and the Director's Rules Implementing Seattle Business Tax Ordinance that set forth the conditions under which the City determines that a business' activities constitute nexus for B&O tax purposes do not violate the Commerce Clause of the United States Constitution;

3. Seattle's B&O tax, which as applied to the petitioner is based on gross revenues of sales, is not subject to cost apportionment. [The cases from other jurisdictions requiring apportionment are not yet the law in Washington. /s/ DSL] Therefore, SMC 5.44.422(A) does not violate the Commerce Clause of the United States Constitution.

Based on the above Conclusions of Law,

IT IS HEREBY ORDERED that:

1. The Decision of the Hearing Examiner is **AFFIRMED** in part and **REMANDED** in part for further proceedings consistent with this decision;

2. The Decision of the Hearing Examiner that petitioner's activities in the City were sufficient to establish nexus is **AFFIRMED**;

3. The Decision of the Hearing Examiner that Chapter 5.44 of the Seattle Municipal Codes does not allow petitioner to allocate its revenue based on a cost apportionment formula is **AFFIRMED**;

4. Petitioner's prayer for relief asking for a declaration that " . . . the assessments issued by the City of Seattle, Department of Finance, are contrary to law as they violate SMC 5.44.422(A) as well as the Commerce Clause of the United States Constitution and are, therefore, null and void" is **DENIED**;

5. Petitioner's prayer for relief asking for costs and attorney's fees is **DENIED**;

IT IS FURTHER ORDERED that:

1. This matter shall be remanded to City of Seattle Office of the Hearing Examiner for further proceedings as follows:

   a) The Hearing Examiner shall determine whether any of the petitioner's activities in the City may be dissociated from its interstate activity under SMC 5.44.422. The Hearing Examiner may permit additional briefing and argument on this matter. If the record is insufficient for the Hearing Examiner to make this determination, the Hearing Examiner shall conduct an additional evidentiary hearing;

   b) The Hearing Examiner shall specify the amount of tax owed by the Petitioner.

2. The Clerk shall transmit a copy of this order to the City of Seattle Office of Hearing Examiner.

DATED this 2nd day of February, 1999.

/s/ Dean S. Lum
JUDGE DEAN S. LUM

Presented by:

MARK H. SIDRAN
Seattle City Attorney

/s/ Steven L. Gross
By: Steven L. Gross WSBA #24658

APPENDIX C

Hon. Dean S. Lum

IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
FOR KING COUNTY

CHRYSLER CORPORATION, Petitioner, vs. CITY OF SEATTLE, FINANCE DEPARTMENT and CITY OF SEATTLE, OFFICE OF THE HEARING EXAMINER, Respondents.	No. 98-2-15612-1 SEA ORDER ON WRIT OF REVIEW *Clerk's Action required*

This matter is before the Court on a Writ of Review issued June 26, 1998, for review of the Findings and Decision of the Hearing Examiner for the City of Seattle in the matter of an appeal by Chrysler Corporation from a Business and Occupation Tax Assessment by the City of Seattle, Executive Services Department, Revenue and Consumer Affairs Section, Hearing Examiner File No. B-98-005.

The above-entitled court, having heard the parties herein, petitioner being represented by its attorneys of record, Bogle & Gates PLLC, by John T. Piper and Scott M. Edwards, respondent being represented by its attorneys of record, Mark H. Sidran, Seattle City Attorney and

Steven L. Gross, Assistant City Attorney, having considered the Return on Writ of Review, the submissions of the parties, having heard oral argument thereon on January 15, 1999, and being otherwise fully informed in the premises, and pursuant to RCW 7.16.120, reaches the following Conclusions of Law regarding those matters before the Hearing Examiner:

1. The Hearing Examiner had jurisdiction over the subject matter of the determination under review;

2. The authority of the Hearing Examiner to hear an appeal of a business and occupation ("B&O") tax assessment by the City of Seattle, Executive Services Department, Revenue and Consumer Affairs Section, had been pursued in the mode required by law;

3. The Hearing Examiner's determination that 1) the petitioner's activities in the City were sufficient to establish nexus for the City to subject petitioner to the City's B&O tax and 2) Seattle's Tax Code (Chapter 5.44 of the Seattle Municipal Code) did not allow petitioner to allocate its revenue based on a cost apportionment formula, was not in violation of the law;

4. Except as specifically set forth in this paragraph, there was sufficient proof of all the facts necessary to be proved in order for the Hearing Examiner to make his decision. The Court concludes that the Hearing Examiner's decision failed to calculate the amount of tax owed by the petitioner. The decision also failed to address whether petitioner presented specific evidence regarding

whether it was entitled to dissociate any of its activities within the City of Seattle from its interstate activities, as provided for in SMC 5.44.422, and to rule on the sufficiency of that evidence.

5. The Findings of the Hearing Examiner were supported by substantial evidence.

On review, petitioner raised issues regarding whether the City's Code as applied to the petitioner violated the Commerce Clause of the United States Constitution. These claims were outside the authority of the Hearing Examiner. Regarding petitioner's constitutional claims, the Court **adopts** the Hearing Examiner's Findings of Fact, and concludes as follows:

1. The petitioner's activities within the City were adequate to establish nexus under the Commerce Clause of the United States Constitution [and to come within the Seattle Municipal Code /s/ DSL]. Even if the activities of the petitioner's district sales managers are relatively insignificant, this insignificance is overwhelmed by the other activities of the petitioner, with particular emphasis on the petitioner's use of local dealers as the petitioner's agent to perform warranty work on the petitioner's behalf;

2. The sections of Chapter 5.44 of the Seattle Municipal Code and the Director's Rules Implementing Seattle Business Tax Ordinance that set forth the conditions under which the City determines that a business' activities constitute nexus for B&O tax purposes do not violate the Commerce Clause of the United States Constitution;

3. Seattle's B&O tax, which as applied to the petitioner is based on gross revenues of sales, is not subject to cost apportionment. [The cases from other jurisdictions requiring apportionment are not yet the law in Washington. /s/ DSL] Therefore, SMC 5.44.422(A) does not violate the Commerce Clause of the United States Constitution.

Based on the above Conclusions of Law,

IT IS HEREBY ORDERED that:

1. The Decision of the Hearing Examiner is **AFFIRMED** in part and **REMANDED** in part for further proceedings consistent with this decision;

2. The Decision of the Hearing Examiner that petitioner's activities in the City were sufficient to establish nexus is **AFFIRMED**;

3. The Decision of the Hearing Examiner that Chapter 5.44 of the Seattle Municipal Codes does not allow petitioner to allocate its revenue based on a cost apportionment formula is **AFFIRMED**;

4. Petitioner's prayer for relief asking for a declaration that " . . . the assessments issued by the City of Seattle, Department of Finance, are contrary to law as they violate SMC 5.44.422(A) as well as the Commerce Clause of the United States Constitution and are, therefore, null and void" is **DENIED**;

5. Petitioner's prayer for relief asking for costs and attorney's fees is **DENIED**;

IT IS FURTHER ORDERED that:

1. This matter shall be remanded to City of Seattle Office of the Hearing Examiner for further proceedings as follows:

   a) The Hearing Examiner shall determine whether any of the petitioner's activities in the City may be dissociated from its interstate activity under SMC 5.44.422. The Hearing Examiner may permit additional briefing and argument on this matter. If the record is insufficient for the Hearing Examiner to make this determination, the Hearing Examiner shall conduct an additional evidentiary hearing;

   b) The Hearing Examiner shall specify the amount of tax owed by the Petitioner.

2. The Clerk shall transmit a copy of this order to the City of Seattle Office of Hearing Examiner.

DATED this 2nd day of February, 1999.

/s/ Dean S. Lum
JUDGE DEAN S. LUM

Presented by:

MARK H. SIDRAN
Seattle City Attorney

/s/ Steven L. Gross
By: Steven L. Gross WSBA #24658

APPENDIX D

FINDINGS AND DECISION OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of the

GENERAL MOTORS CORPORATION

from B&O Tax Assessments by the Director of the Executive Services Department

Hearing Examiner Files:
B-98-004
B-98-006

DOCKETED

Introduction

The Director of the Executive Services Department issued two tax assessments against the appellant, which exercised the right to appeal as provided by Chapter 5.44 of the Seattle Municipal Code.

The matter was heard before the undersigned Deputy Hearing Examiner on May 19, 1998. The record was held open until May 29, 1998 for the submittal of post-hearing memoranda.

Parties represented at the proceeding were: General Motors Corporation, by John Piper and Scott Edwards, attorneys-at-law; and the Finance Director, by Patricia Nellermoe, Assistant City Attorney.

On May 27, 1998, the appellant submitted information requested by the Hearing Examiner regarding the number of the appellant's representatives who conduct business in Seattle. The Department objected to the

Examiner's consideration of the information. However, the Examiner has concluded that the information is properly part of the record, and it has been attached to, and made part of Exhibit 48.

For purposes of this decision, section numbers refer to the Seattle Municipal Code (SMC).

After due consideration of the evidence elicited during the public hearing, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on appeal.

Findings of Fact

1. The subject of these appeals are two assessments for B&O taxes entered by the Executive Services Department, (Department) against General Motors Corporation. One assessment covers the year 1987 and seeks $272,058.46. The other covers the year 1986 and the years 1988 through 1997, and seeks $2,660,639.12. The appeals were revised during the appeal process and now total $2,493,982.67.

2. General Motors (GM) is in the business of manufacturing and selling motor vehicles and related parts and accessories to independent dealers throughout the world, including Seattle.

3. The business and occupation taxes assessed by the Department were based on GM's gross wholesale sales of vehicles and vehicle parts to its Seattle dealers between 1986-1997. Those sales were taxed at a rate set forth in SMC Ch. 5.44 for the sale of goods at wholesale.

4. In filing its appeals from the two assessments, GM made two arguments: (1) That there is a lack of nexus, both in terms of City Code and the U.S. Constitution, that would allow Seattle to impose a tax on GM; and (2) That the Department's assessment violates the U.S. Constitution due to its failure to apportion the revenues subjected to the tax.

Nature of GM's Business

5. GM is a corporation organized and existing under the laws of the state of Delaware with its principal place of business in Detroit, Michigan.

6. There are five GM dealers in Seattle: Huling Brothers, Frederick Cadillac, Alley Chevrolet, Nelson Chevrolet, and Westlund Buick GMC. Chuck Olson Chevrolet, listed as a Seattle dealer in the Department's pre-hearing memorandum, and in Exhibit 26, is north of the city limits, and is not a Seattle business. It is unclear from the items in the record whether or not sales to Chuck Olson were included in the revenues subject to these assessments.

7. GM owned real property in Seattle during the audit period. One parcel, the site of the old Rood Buick at Westlake and Denny, was owned by GM between 1983 and 1995. The other property was in the International District. It was not established that vehicles were sold from either property during their ownership by GM.

8. GM maintains no office or other place of business in Seattle and has no employees or other representatives based in Seattle. At no time during the audit period were any personnel based in Seattle.

9. Dealers order GM vehicles and parts by computer, and the merchandise is delivered to the dealers by common carrier.

10. Prior to 1996, the offices for all the District Managers for the zone that includes Seattle were in Portland, Oregon. In 1996, Chevrolet, Pontiac-GMC and Buick divisions opened zone offices in Bellevue, Washington.

11. Each dealer receives approximately one visit each month from a sales representative (typically a District Sales Manager) to discuss market conditions, new products, and retail customer satisfaction levels. The representative neither solicits the sale of vehicles, nor writes or accepts orders for vehicles. These visits typically last less than an hour.

12. Each dealer also receives approximately one visit each month from a service representative (typically a District Service Manager). The service representatives contact dealers to review warranty work documents, discuss problems that may be occurring with a certain make or model of vehicle, and, on occasion, speak to a dissatisfied retail customer with regard to product quality. These representatives do not accept orders or payments for parts.

13. GM also utilizes a parts representative who visits each dealer every four to six weeks.

14. On a periodic basis, GM estimates anticipated demand for each vehicles model and allocates a specific number of vehicles of each model to each dealer. The dealers are notified of this allocation electronically. Each dealer than makes an independent decision as to the

number of each model of vehicles it wishes to order, up to its full allocation. Dealers are not required to order all of the cars allotted to them.

15. The sales representatives have no authority or ability to obtain additional allocations of popular vehicles for a dealership.

16. From time to time, GM representatives conduct training seminars for dealership personnel. These seminars are conducted at various locations, but are often outside the City in locations such as Tigard, Oregon or at Shoreline Community College.

17. Eleven GM employees participated in the 1997 Auto Show at the Kingdome.

18. The Sales and Service Agreement between GM and the dealer (see Exhibit 17) provides that GM will conduct annual reviews of the dealer's sales performance and service performance.

19. GM promotes its products through national advertising that is prepared outside of the State of Washington and is placed through advertising agencies that are also outside of the state. All local advertising is done by individual dealers or regional Dealer Advertising Associations. GM is not a member of the Dealer Advertising Associations and has no input into the Associations' business.

20. GM's 1996 sales to its Seattle dealers equaled approximately $61 million (Exhibit 8).

21. The cost, in 1996, of the visits of the District Sales and Service Managers, and the parts representative, was between $80,000 and $110,000, depending on whether the

total number of representatives in that year totaled seven or nine. In either event, the cost was a tiny fraction of GM's 1996 Seattle sales revenue.

22. Warranty payments to Seattle dealers appear to average over $17,000 per dealer per quarter (Exhibit 18).

23. The various GM dealerships pay the retail B&O tax on the proceeds of their sales of vehicles and parts to their customers.

24. SMC 5.44.400 reads, in part, as follows:

> *There is levied upon and shall be collected from and paid as hereinafter provided by every person on account and for the privilege of engaging in business activities within the City, whether his or her office or place of business is within or without the City, a business and occupation tax or fee, sometimes herein referred to as the "tax." The tax, except as hereinafter provided, shall be in amounts to be determined by application of rates given against value of products, gross proceeds of sale, or gross income of business as the case may be, as follows:*
>
> * * *
>
> *C. Upon every person engaging within the City in the business of making sales at wholesale or retail, except persons taxable under subsection D of this section; as to such persons, the amount of tax with respect to such business of making sales at wholesale or retail shall be equal to the gross proceeds of such sales of the business without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of two hundred fifteen (215) one-thousandths of one percent (1%).*

25. SMC 5.44.422 is entitled "Persons in wholesaling/ retailing both within and without the City". Paragraph A of that section reads as follows:

> *A. No Place of Business Within the City. A person who is subject to tax under subsections C or D1 of Section 5.44.400 and has no office, store or other place of business within the City, shall allocate to the City the gross proceeds of all sales in which the taxpayer's business activity within the City is either a determining element in the transaction or, under the facts and circumstances, a significant factor in making or holding the market here. Mere delivery of goods, without accompanying efforts to maintain an economic market, shall not constitute a determining element in affecting a transaction.*

26. SMC Ch. 5.44 provides for the apportionment of income from the sales of services where a portion of the activity giving rise to the sale takes place outside of the City. See SMC 5.44.428.

27. The U.S. Supreme Court has read the Commerce Clause of the U.S. Constitution to prohibit discrimination against interstate commerce, and to bar state regulations that unduly burden interstate commerce. In the case of *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S. Ct. 1076, 51 L.Ed.2d 326, (1977), the Court established a four-part test to determine whether a state (or local) tax withstands a Commerce Clause challenge. Under that test, the Court will sustain a tax so long as the "tax (1) is applied to an activity with a substantial nexus with the taxing State, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services provided by the State." 430 U.S. at 279.

28. SMC 5.44.470 reads, in part, as follows:

> *In computing the tax or fee due under this subchapter, there may be deducted from the measure of tax the following items:*
>
> * * *
>
> *E. Amounts derived from business which the City is prohibited from taxing under the Constitution or laws of the state or the Constitution of the United States, and any amounts collected by the taxpayer as an excise tax, including but not limited to the leasehold excise tax, retail sales and use tax, admissions tax and gambling tax.*

29. As noted by Justice Scalia in his concurrence in the case of *Quill Corporation v. North Dakota*, 504 U.S. 298, 112 S. Ct. 1904, 119 L. Ed. 2d 91 (1992), the Supreme Court has recently told lower courts that "[i]f a precedent of this Court appears to rest on reasons rejected in some other line of decisions, [they] should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decision. *Rodriguez de Quijas v. Shearson/American Express, Inc*, 490 U.S. 477, 484, 109 S.Ct. 1917, 1921, 104 L.Ed.2d 526 (1989)."

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to SMC 5.44.120. Pursuant to paragraph C of that section, in all appeals, *"the Finance Director's assessment or refund denial shall be regarded as prima facie correct."* Paragraph D provides that the Hearing Examiner *"may reverse or modify an action of the Director and ascertain the correct amount of the tax, fee, interest or penalty due if the*

Director's assessment or refund denial violates the terms of this chapter."

2. Based on the above, the taxpayer challenging an assessment or refund denial bears the burden of demonstrating that the Director's action violates SMC Ch. 5.44.

3. As noted in the findings, this appeal is based on two arguments: (1) That the threshold established in the Seattle Municipal Code for taxation of persons without an office in the City has not been met (i.e., that there is a lack of nexus); and (2) That if tax is imposed, it must be interpreted to require apportionment in order to be constitutional.

4. Under the terms of 5.44.422, a person with no place of business within the City is subject to tax on the proceeds of all sales *"in which the taxpayer's business activity within the City is either a determining element in the transaction or, under the facts and circumstances, a significant factor in making or holding the market here."*

5. In support of its argument that the appellant is subject to Seattle's B&O tax, the Department points to the activities of GM's sales, service, and parts representatives, to the ownership of real property in Seattle, to the presence of GM personnel at the Seattle Auto Show, and to the warranty services provided by the GM dealers, for which they are compensated by GM.

6. It would be a considerable stretch to find that GM's annual participation at the Auto Show constitutes either a determining element in many of its sales transactions, or that it plays much of a role in making or holding a market in Seattle for GM cars. Similarly, GM's ownership of real

property that was not actively being used for the sale of cars cannot be seen as having much impact in terms of GM making or holding a market in Seattle. However, the activities of GM's sales, service, and parts representatives, and the warranty work performed in Seattle are on a different level. In regard to these activities, the record does not demonstrate that the Department erred in its application of SMC 5.44.422.

7. In regard to the various representatives, especially the sales representatives, it was odd that both the Department and GM chose to introduce hearsay testimony and exhibits regarding the role of the representatives, but that neither party chose to actually call one to testify as to the job they perform. Having said that, the record supports GM's contention that the district sales managers play no direct role in the individual purchasing decisions of Seattle dealers. However, the record also indicates that they do visit Seattle dealers on a regular basis and do play a role in informing the dealers about upcoming promotions and new products. This is information that the dealers can use in conjunction with their efforts to sell cars to the public, and thus presumably has some effect on the number of cars GM is able to sell.

8. The efforts of the service representatives are particularly important. The evidence suggests that these individuals play a role in updating service personnel on the problems associated with various models, and that on occasion the service representative will drive a customer's car, or even meet with an aggrieved customer, in order to help resolve a consumer complaint. Such actions, aimed at helping the dealership to attain a higher level of

customer satisfaction, play an important role in helping to maintain GM's market in Seattle.

9. The same is true of the warranty work in general. As noted by the Department the warranty offered with new cars serves a marketing function. Consumers will not purchase cars not covered by a warranty. The crucial role played by the warranty is evidenced by the role service plays in the dealer agreement, and by the large amounts paid by GM to its dealers to perform warranty work.

10. The conclusion that GM is subject to taxation in Seattle does not offend the U.S. Constitution. The appellant conceded that GM's contacts in Seattle were sufficient to satisfy due process nexus, but argued that Commerce Clause nexus was lacking. However, this argument is difficult to reconcile with the language of the U.S. Supreme Court in *Tyler Pipe Industries, Inc. v. Washington State Department of Revenue*, 483 U.S. 232, 107 S.Ct. 2810, 97 L.Ed.2d 199, (1987). In *Tyler*, the Court adopted the language of the Washington Supreme Court in finding that "the crucial factor governing nexus is whether the activities performed in this state on behalf of the taxpayer are significantly associated with the taxpayer's ability to establish and maintain a market in this state for sales." The work of the district managers in Seattle and the warranty work performed within the City meet this test. It is, moreover, noteworthy that the Tyler representative who was found to establish the necessary nexus was not a Tyler employee, but an independent contractor. Thus, the fact that the dealer performs warranty work not as an agent of GM, but as an independent contractor, is not significant.

11. The next element of GM's appeal focused on the issue of apportionment. Here again, the Department's assessment was not shown to be in error.

12. Looking first at the language of SMC Ch. 5.44, there simply is no basis for "apportionment" of the revenues subject to the B&O tax. There is a basis for "allocation", and the Department followed that principle in assessing the tax against only the sale of automobiles and parts to dealerships within the City of Seattle. However, the Code does not provide for apportionment of the revenues produced by those sales.

13. GM argues that apportionment is required by the U.S. Constitution, and that apportionment can be obtained within the Code by applying SMC 5.44.470(E), the provision which allows for a deduction from the measure of tax of "amounts derived from business which the City is prohibited from taxing under the Constitution . . . " In support of this argument, GM points to the recent case of *Oklahoma Tax Commission v. Jefferson Lines, Inc.*, 514 U.S. 175, 115 S.Ct. 1331, 131 L.Ed. 2d 261 (1995). That case makes a firm distinction between sales taxes and gross receipts taxes, and a persuasive argument can be made that the case points the way towards requiring the apportionment of revenue derived from an interstate sale, even though the "sale" itself takes place only in one jurisdiction. See Hellerstein, McIntyre, and Pomp, *Commerce Clause Restraints on State Taxation After Jefferson Lines*, 51 Tax Law Review 47 (1995).

14. While one can agree with Professor Hellerstein, et al., that the Supreme Court may be in the process of requiring apportionment, it is a different thing to say that

apportionment is currently the law of the land. As recently as the *Tyler Pipe* case, the Supreme Court affirmed the unapportioned assessment of the Washington State B&O tax against the full value of the taxpayer's in-state wholesaling, finding that wholesaling must be viewed as "a separate activity conducted wholly within Washington that no other State has jurisdiction to tax." In light of Jefferson Lines, the reasoning in *Tyler* may be vulnerable, but that ultimately is for the Supreme Court to decide. For now *Tyler* is controlling.

15. As there is no current constitutional requirement that the wholesaling tax be apportioned, there is no basis for any deduction from the measure of tax under SMC 5.44.470(E).

16. Finding 6 notes that Chuck Olson Chevrolet is not a Seattle business. Therefore, if the assessments at issue include revenue from sales to that dealership, they should be revised to exclude that revenue.

Decision

Subject to the limitation in Conclusion 16, the assessment of the Executive Services Department is AFFIRMED.

Entered this 12th day of June, 1998.

/s/ Guy E. Fletcher
Guy E. Fletcher
Deputy Hearing Examiner

APPENDIX E

FINDINGS AND DECISION OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of the

CHRYSLER CORPORATION

from the denial of a refund request by the Director of the Executive Services Department

Hearing Examiner File: **B-98-005**

DOCKETED

Introduction

The Director of the Executive Services Department denied a tax refund sought by the appellant, which exercised the right to appeal as provided by Chapter 5.44 of the Seattle Municipal Code.

The matter was heard before the undersigned Deputy Hearing Examiner on May 20, 1998. The record was held open until May 29, 1998 for the submittal of post-hearing memoranda.

Parties represented at the proceeding were: Chrysler Corporation, by John Piper and Scott Edwards, attorneys-at-law; and the Finance Director, by Patricia Nellermoe, Assistant City Attorney.

For purposes of this decision, section numbers refer to the Seattle Municipal Code (SMC).

After due consideration of the evidence elicited during the public hearing, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on appeal.

Findings of Fact

Procedural History

1. The subject of this appeal is the denial by the Executive Services Department, (Department) of a request by Chrysler Corporation (Chrysler) for a refund of business and occupation taxes covering the years 1986 through 1995.

2. Chrysler is in the business of manufacturing and selling motor vehicles and related parts and accessories to independent dealers.

3. The business and occupation taxes paid by Chrysler were based on the gross wholesale sales of vehicles and vehicle parts to dealers in Seattle during 1986-1995. Those sales were taxed at the rate set forth in SMC Ch. 5.44 for the sale of goods at wholesale.

4. On January 7, 1998, Chrysler sent a request for refund to the Department seeking the return of $1,181,791. The request was premised on two contentions: (1) That there is a lack of nexus, both in terms of City Code and the U.S. Constitution, that would allow Seattle to impose a tax on Chrysler; and (2) That the Department's assessment violates the U.S. Constitution due to its failure to apportion the revenues subjected to the tax.

Nature of Chrysler's Business

5. Chrysler is a corporation organized and existing under the laws of the state of Delaware with its principal place of business in Auburn Hills, Michigan.

6. During the years 1986 and 1995, Chrysler had six dealers in Seattle to which it sold vehicles and parts: Huling Brothers Chrysler Plymouth; Bill Pierre Dodge; North Seattle Chrysler Plymouth; Town and Country Chrysler Plymouth/Jeep Eagle; Bayside Jeep Eagle; and Seattle Jeep.

7. Chrysler requires its dealers to place a large permanent sign on their property advertising Chrysler vehicles. Chrysler owned and paid property tax on three permanent Chrysler signs, located at the Huling Brothers, Bill Pierre, and North Seattle dealerships. The signs were leased by the dealers from Chrysler.

8. Chrysler maintains no office or other place of business in Seattle and has no employees or other representatives based in Seattle. At no time during the audit period were any personnel based in Seattle.

9. Dealers order Chrysler vehicles and parts by computer, and the merchandise is delivered to the dealers by common carrier.

10. The Chrysler "zone office" is located in Beaverton, Oregon. The zone's Sales District Manager and the Service District Manager are both based in this office.

11. The Sales District Manager visits each dealer approximately once a month to discuss market conditions, new products, and retail customer satisfaction levels. These visits typically last less than an hour. The

manager neither solicits the sale of vehicles, nor writes or accepts orders for vehicles.

12. The Service District Manager contacts dealers to review warranty work documents, discuss problems that may be occurring with a certain make or model of vehicle, and, on occasion, speak to a dissatisfied retail customer with regard to product quality. The service manager does not accept orders or payments for parts.

13. On a periodic basis, Chrysler estimates anticipated demand for each vehicle model and allocates a specific number of vehicles of each model to each dealer. The dealers are notified of this allocation electronically. Each dealer then makes an independent decision as to the number of each model of vehicles it wishes to order, up to its full allocation. The dealers are not required to order all of the cars allotted to them.

14. The Sales District Manager has no authority or ability to obtain additional allocations of popular vehicles for a dealership.

15. From time to time, Chrysler representatives conduct training seminars for dealership personnel. These seminars are conducted at various locations in King County.

16. Item 36 of the Sales and Service Agreement between Chrysler and the dealer (see Exhibit 16) provides as follows: "This Agreement does not create the relationship of principal and agent between CC [Chrysler Corporation] and DEALER, and under no circumstances is either party to be considered the agent of the other."

17. Item 1(c) of the Sales and Service Agreement provides, in part, as follows:

> CC has placed its trust and confidence in the integrity and fidelity of DEALER and, therefore, CC shall compensate DEALER for services claimed to have been performed by DEALER under CC's warranties or campaign inspections and correction if claimed in accordance with CC's then current policies . . . DEALER shall perform all warranty, pre-delivery, road-ready, campaign inspections and correction, and other services hereunder as an independent contractor and not as the agent of CC and shall hold CC harmless from all claims . . . against CC arising out of or in connection with DEALER's performance of service.

18. Chrysler promotes its products through national advertising that is prepared outside of the State of Washington and is placed through advertising agencies that are also outside of the state. All local advertising is done by individual dealers or regional Dealer Advertising Associations. Chrysler is not a member of the Dealer Advertising Associations and has no input into the Associations' business.

19. Chrysler's 1995 sales to its Seattle dealers totaled $92,330,296.

20. The cost, in 1995, of the visits of the Sales District Manager and the Service District Manager to Seattle dealerships equaled $22,050.

21. Warranty payments to Seattle dealers between December, 1997 and February, 1998 ranged between approximately $183,000 to $282,000 each month.

22. The various Chrysler dealerships in Seattle pay the retail B&O tax on the proceeds of their sales of vehicles and parts to their customers.

23. SMC 5.44.400 reads, in part, as follows:

> *There is levied upon and shall be collected from and paid as hereinafter provided by every person on account and for the privilege of engaging in business activities within the city, whether his or her office or place of business is within or without the City, a business and occupation tax or fee, sometimes herein referred to as the "tax." The tax, except as hereinafter provided, shall be in amounts to be determined by application of rates given against value of products, gross proceeds of sale, or gross income of business as the case may be, as follows:*
>
> * * *
>
> *C. Upon every person engaging within the City in the business of making sales at wholesale or retail, except persons taxable under subsection D of this section; as to such persons, the amount of tax with respect to such business of making sales at wholesale or retail shall be equal to the gross proceeds of such sales of the business without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of two hundred fifteen (215) one-thousandths of one percent (1%).*

24. SMC 5.44.422 is entitled "Persons in wholesaling/retailing both within and without the City". Paragraph A of that section reads as follows:

> *A. No Place of Business Within the City. A person who is subject to tax under subsections C or D1 of Section 5.44.400 and has no office, store or other place of business within the City, shall allocate to the city the gross proceeds of all sales in which the*

taxpayer's business activity within the City is either a determining element in the transaction or, under the facts and circumstances, a significant factor in making or holding the market here. Mere delivery of goods, without accompanying efforts to maintain an economic market, shall not constitute a determining element in affecting a transaction.

25. SMC Ch. 5.44 provides for the apportionment of income from the sales of services where a portion of the activity giving rise to the sale takes place outside of the City. See SMC 5.44.428.

26. The U.S. Supreme Court has read the Commerce Clause of the U.S. Constitution to prohibit discrimination against interstate commerce, and to bar state regulations that unduly burden interstate commerce. In the case of *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S. Ct. 1076, 51 L.Ed.2d 326, (1977), the Court established a four-part test to determine whether a state (or local) tax withstands a Commerce Clause challenge. Under that test, the Court will sustain a tax so long as the "tax (1) is applied to an activity with a substantial nexus with the taxing State, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services provided by the State." 430 U.S. at 279.

27. SMC 5.44.470 reads, in part, as follows:

In computing the tax for fee due under this subchapter, there may be deducted from the measure of tax the following items:

* * *

E. Amounts derived from business which the City is prohibited from taxing under the Constitution or laws of the state or the Constitution of the

United States, and any amounts collected by the taxpayer as an excise tax, including but not limited to the leasehold excise tax, retail sales and use tax, admissions tax and gambling tax.

28. As noted by Justice Scalia in his concurrence in the case of *Quill Corporation v. North Dakota*, 504 U.S. 298, 112 S. Ct. 1904, 119 L. Ed. 2d 91 (1992), the Supreme Court has recently told lower courts that "[if] a precedent of this Court appears to rest on reasons rejected in some other line of decisions, [they] should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions. *Rodriguez de Quijas v. Shearson/American Express, Inc*, 490 U.S. 477, 484, 109 S.Ct. 1917, 1921, 104 L.Ed.2d 526 (1989)."

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to SMC 5.44.120. Pursuant to paragraph C of that section, in all appeals *"the Finance Director's assessment or refund denial shall be regarded as prima facie correct."* Paragraph D provides that the Hearing Examiner *"may reverse or modify an action of the Director and ascertain the correct amount of the tax, fee, interest or penalty due if the Director's assessment or refund denial violates the terms of this chapter."*

2. Based on the above, the taxpayer challenging an assessment or refund denial bears the burden of demonstrating that the Director's action violates SMC Ch. 5.44.

3. As noted in the findings, this appeal is based on two arguments: (1) That the threshold established in the Seattle Municipal Code for taxation of persons without an

office in the City has not been met (i.e., that there is a lack of nexus); and (2) That if tax is imposed, it must be interpreted to require apportionment in order to be constitutional.

4. Under the terms of 5.44.422, a person with no place of business within the City is subject to tax on the proceeds of all sales *"in which the taxpayer's business activity within the City is either a determining element in the transaction or, under the facts and circumstances, a significant factor in making or holding the market here."*

5. In support of its argument that the appellant is subject to Seattle's B&O tax, the Department points to the activities of Chrysler's district managers, to the leasing of the signs at the two Seattle dealerships, to the presence of Chrysler personnel at the Seattle Auto Show and at a promotion at Northgate, and to the warranty services provided by the Chrysler dealers, for which they are compensated by Chrysler.

6. It would be a considerable stretch to find that Chrysler's leasing of signs at three of its dealerships or its annual participation at the Auto Show constitute either a determining element in many of its sales transactions, or play much of a role in making or holding a market in Seattle for Chrysler cars. However, the activities of Chrysler's district managers and the warranty work performed in Seattle are on a different level. In regard to these activities, the record does not demonstrate that the Department erred in its application of SMC 5.44.422.

7. In regard to the district managers, it was odd that both the Department and Chrysler chose to introduce hearsay testimony and exhibits regarding the role of the

managers, but that neither party chose to call one of the managers to testify as to the job they perform. Having said that, the record supports Chrysler's contention that the district managers play no direct role in the individual purchasing decisions of Seattle dealers. However, the record also indicates that they do visit Seattle dealers on a regular basis and do play a role in informing the dealers about upcoming promotions and new products. This is information that the dealers can use in conjunction with their efforts to sell cars to the public, and thus presumably has some effect on the number of cars Chrysler is able to sell.

8. The efforts of the service district manager are particularly important. The evidence suggests that this individual plays a role in updating service personnel on the problems associated with various models, and that on occasion the service district manager will drive a customer's car, or even meet with an aggrieved customer, in order to help resolve a consumer complaint. Such actions, aimed at helping the dealership to attain a higher level of customer satisfaction, play an important role in helping to maintain Chrysler's market in Seattle.

9. The same is true of the warranty work in general. It was conceded by the Chrysler witnesses that the warranty offered with new cars serves a marketing function. Consumers will not purchase cars not covered by a warranty. The crucial role played by the warranty is evidenced by the role service lays in the dealer agreement, by the extensive nature of the Warranty Policy and Procedure Manual (Exhibit 23), and by the large amounts paid by Chrysler to its dealers to perform warranty work.

10. The conclusion that Chrysler is subject to taxation in Seattle does not offend the U.S. Constitution. The appellant conceded that Chrysler's contacts in Seattle were sufficient to satisfy due process nexus, but argued that Commerce Clause nexus was lacking. However, this argument is difficult to reconcile with the language of the U.S. Supreme Court in *Tyler Pipe Industries, Inc. v. Washington State Department of Revenue*, 483 U.S. 232, 107 S.Ct. 2810, 97 L.Ed.2d 199, (1987). In *Tyler*, the Court adopted the language of the Washington Supreme Court in finding that "the crucial factor governing nexus is whether the activities performed in this state on behalf of the taxpayer are significantly associated with the taxpayer's ability to establish and maintain a market in this state for sales." The work of the district managers in Seattle and the warranty work performed within the City meet this test. It is, moreover, noteworthy that the Tyler representative who was found to establish the necessary nexus was not a Tyler employee, but an independent contractor. Thus, the fact that the dealer performs warranty work not as an agent of Chrysler, but as an independent contractor, is not significant.

11. The next element of Chrysler's appeal focused on the issue of apportionment. Here again, the Department's assessment was not shown to be in error.

12. Looking first at the language of SMC Ch. 5.44, there simply is no basis for "apportionment" of the revenues subject to the B&O tax. There is a basis for "allocation", and the Department followed that principle in assessing the tax against only the sale of automobiles and parts to dealerships within the City of Seattle. However, the Code

does not provide for apportionment of the revenues produced by those sales.

13. Chrysler argues that apportionment is required by the U.S. Constitution, and that apportionment can be obtained within the Code by applying SMC 5.44.470(E), the provision which allows for a deduction from the measure of tax of "amounts derived from business which the City is prohibited from taxing under the Constitution . . . " In support of this argument, Chrysler points to the recent case of *Oklahoma Tax Commission v. Jefferson Lines, Inc.*, 514 U.S. 175, 115 S.Ct. 1331, 131 L.Ed. 2d 261 (1995). That case makes a firm distinction between sales taxes and gross receipts taxes, and a persuasive argument can be made that the case points the way towards requiring the apportionment of revenue derived from an interstate sale, even though the "sale" itself takes place only in one jurisdiction. See Hellerstein, McIntyre, and Pomp, *Commerce Clause Restraints on State Taxation After Jefferson Lines*, 51 Tax Law Review 47 (1995).

14. While one can agree with Professor Hellerstein, et al., that the Supreme Court may be in the process of requiring apportionment, it is a different thing to say that apportionment is currently the law of the land. As recently as the *Tyler Pipe* case, the Supreme Court affirmed the unapportioned assessment of the Washington State B&O tax against the full value of the taxpayer's in-state wholesaling, finding that wholesaling must be viewed as "a separate activity conducted wholly within Washington that no other State has jurisdiction to tax." In light of *Jefferson Lines*, the reasoning in *Tyler* may be vulnerable, but that ultimately is for the Supreme Court to decide. For now *Tyler* is controlling.

15. As there is no current constitutional requirement that the wholesaling tax be apportioned, there is no basis for any deduction from the measure of tax under SMC 5.44.470(E).

DECISION

The decision of the Executive Services Department to deny the requested refund is **AFFIRMED**.

Entered this 12th day of June, 1998.

/s/ Guy E. Fletcher
Guy E. Fletcher
Deputy Hearing Examiner

APPENDIX F

THE SUPREME COURT OF WASHINGTON

GENERAL MOTORS CORPORATION, Petitioner, v. CITY OF SEATTLE, FINANCE DEPARTMENT, Respondents. --- CHRYSLER CORPORATION, Petitioner, v. CITY OF SEATTLE, FINANCE DEPARTMENT, Respondents.	NO. 71225-5 **ORDER** C/A NO. 46152-4-I, 47562-2-I & 47561-4-I (consolidated) (Filed Dec. 6, 2001)

This matter came before the Court on its December 6, 2001, En Banc Conference. The Court considered the Petition and the files herein;

Now, therefore, it is hereby

IT IS ORDERED:

That the Petition for Review is denied.

DATED at Olympia, Washington this 6th day of December, 2001.

/s/ Gerry L. Alexander
CHIEF JUSTICE

APPENDIX G

Constitutional, Municpal Code and Regulatory Provisions.

United States Constitution, Article I:

Section 8. The Congress shall have Power . . . ; To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; . . .

Seattle Municipal Code:

5.44.400 Tax or fee levied. There is levied upon and shall be collected from and paid as hereinafter provided by every person on account and for the privilege of engaging in business activities within the City, whether his or her office or place of business is within or without the City, a business and occupation tax or fee, sometimes herein referred to as the "tax." The tax, except as hereinafter provided, shall be in amounts to be determined by application of rates given against value of products, gross proceeds of sale, or gross income of business as the case may be, as follows:

* * *

C. Upon every person engaging within the City in the business of making sales at wholesale or retail, except persons taxable under subsection D of this section; as to such persons, the amount of tax with respect to such business of making sales at wholesale or retail shall be equal to the gross proceeds of such sales of the business

without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of two hundred fifteen (215) one-thousandths of one percent (1%).

5.44.422 Persons in wholesaling/retailing both within and without the City. A. No Place of Business Within the City. A person who is subject to tax under subsections C or D1 of Section 5.44.400 and has no office, store or other place of business within the City, shall allocate to the City the gross proceeds of all sales in which the taxpayer's business activity within the City is either a determining element in the transaction or, under the facts and circumstances, a significant factor in making or holding the market here. Mere delivery of goods, without accompanying efforts to maintain an economic market, shall not constitute a determining element in affecting a transaction.

Seattle Business Tax Rules:

5-44-002 Engaging in Business Illustrated. (1) Seattle Municipal Code (SMC) 5.44.400 levies an excise tax upon the privilege of "engaging in business activities" within Seattle, whether or not you maintain a place of business within Seattle, measured by the gross revenue of such activities. The amount of tax is determined by multiplying the gross revenue, less any exemptions or deductions,

by the applicable rate unless the minimum tax threshold applies. (See SMC 5.44.040(C) and Seattle Rule 5-44-003).

(2) The term "engaging in business" means commencing, conducting, or continuing in business and includes any business, professional or commercial activity which is carried on, or based, within the City. It includes any business activity whether or not the business entity or person has a location within or without the City, or within or without the State, whereby employees, representatives, brokers or agents solicit sales, enter into contracts, perform other business activities, endeavor to maintain a share of the market within Seattle, or the business entity avails itself to the benefits of an economic market in the City.

(3) Listed below are activities which, if conducted within the City, illustrate "engaging in business activity." The list is not all-inclusive.

(a) Maintains or utilizes within the City an office, distribution house, sales office, warehouse, service enterprise or other place of business; or

(b) Maintains within the City any inventory or stock of goods for sale; or

(c) Solicits orders within the City of Seattle whether or not such orders are accepted in the City; or

(d) Transportation providers who engage in the "picking-up" of tangible personal property in the City; or

(e) Engages in the activity of leasing, renting or servicing of tangible personal property located within the City; or

(f) Engages in extracting or manufacturing activities within the City; or

(g) Rendering from an office or place of business within the City personal services or general services as illustrated in Seattle Rule 5-44-224; rendering from a home, when the home is the only location, within the City personal services or general services; or

(h) Engages in "service" activities where a performance contract gives an out-of-city business, or person, a right to conduct their business within the City such as doctors with operating rights or privileges at a hospital, janitorial services, security guard activities, building maintenance contracts, real estate management agreements for buildings located within Seattle; or

(i) Rents or leases a room or space and provides a "service" activity such as seminars, performances, or other activities as illustrated in Seattle Rule 5-44-224; or

(j) Engages in selling tangible personal property within the City or assisting in a sale or transfer of tangible personal property such as: solicitation, negotiation, offer, acceptance, credit investigation, credit approval, transportation of the goods, delivery or performance of the service, passage of title or receipt of purchase price; or

(k) The performance of construction or installation contracts; or

(l) Accepts or executes a contract with the City involving a sale to the City of materials, supplies, equipment, improvements, or contractual services. It will be presumed that any contract entered into by the City of

Seattle, and signed by a City department or by any other City official, will be considered executed within the City, thereby giving the City taxing authority over these activities (refer to SMC 5.44.030).

APPENDIX H

Rule 29.6 List of Petitioner Corporations and their Parents and Subsidiaries

PETITIONER:

General Motors Corporation
Parent: None
Subsidiaries, Joint Ventures and Affiliates:
AccuTel, Inc.
Adam Opel Aktiengesellschaft
Adam Opel Unterstuetuetzungskasse GmbH
Adela Investment Company S.A.
Advent International L.P.
AeroVironment, Inc.
Aisin GM Allison Co., Ltd.
Aktiebolaget Grundstenen 90586
Albany Auto Group, LLC
Alfredo Investors LLC
Allan B. Dannatt & Co.
Allison Transmission Europe B.V.
Aliso Village, LLC
Alpha Trans Grundbesitz-und
Vermogensverwaltungs GmbH
American Isuzu Motors, Inc.
Anadolu Isuzu
Annunciata Corporation
Apollo Japan Investments, Inc.
Argonaut Holdings, Inc.
Argonaut Relocation Services, L.L.C.
Aries Investment Strategies, Inc.
Arros Finance Limited
Asset Lending Corporation
Auritec, S.A.
Autocableados Electricos, S.A. de C.V.
Autofinanciamiento GMAC, S.A. de C.V.
Autohaus am Nordring GmbH, Berlin

Auto Lease Payment Corporation
Automotive Air Charter, Inc.
Automotive Youth Education Systems, Inc.
Avicom International, S.A.
Avis, Inc.
B&S Fiduciaria S.A.
BGL Advisors, LLC
Banco General Motors S.A.
Bangchan General Assembly Company, Ltd.
Bankruptcy Solutions, Inc.
Bartoletti Holdings, B.V.
Basic Credit Holding Company, L.L.C.
Basis 100 Inc.
Boathouse, Inc.
BOCO (Proprietary) Limited
Brazauto Industria e Comercio Ltda.
Brazauto Trading (Cayman) Limited
Broadband Sports, Inc.
Bufete Juridico Delta, S.A. de C. V.
Burlington Acceptance Corporation
BuyPower Yugen Kaisha
CAMI Automotive, Inc.
CAP RE of Vermont, Inc.
Cedar Lane Holding Limited
Chicnahue Calpulli, Resolucion de Cartera,
S. de R.L. de C.V.
Cicome Calpulli, Resolucion de Cartera, S. de R.L. de C.V.
Cicuace Calpulli, Resolucion de Cartera,
S. de R.L. de C.V.
Chicueye Calpulli, Resolucion de Cartera,
S. de R.L. de C.V.
CIM Insurance Corporation
Cadmic Agency Corporation of Ohio
California Broadcast Center, LLC
Canadian Securitized Auto Receivables Corporation
Capital Auto Receivables, Inc.
Car Care Plan do Brasil Limitada

Car Care Plan do Mexico, S.A.
Car Care Plan EURL
Car Care Plan GmbH (incorporated in Austria)
Car Care Plan GmbH (incorporated in Germany)
Car Care Plan (Holdings) Limited
Car Care Plan Limitada
Car Care Plan Limited
Car Care Plan (Securities Division) Limited
Car Care Plan do Mexico, S.A.
Carl Company Limited
Carus Grundstucks-Vermietungsgesellschaft mbH & Co. Object Kuno 65 KG
Carus Grundstucks-Vermietungsgesellschaft mbH & Co. Object Leo 40 KG
Ce Calpulli, Resolucion De Cartera, S. De R.L. De D.V.
Celland Limited
Chevrolet Sales (Thailand) Ltd.
Chevrolet Sociedad Anonima de Ahorro para Fines Determinados
CLAS I, LLC
CLAS II, LLC
CLAS III, LLC
CLAS IV, LLC
CLAS V, LLC
Colossal Investments, Inc.
Columbia Place Investors Limited
Commerce One, Inc.
Comercial Invesora Rubi, S.L.
Commerical Asset Trading, Inc.
Commercial Capital Initiatives, Inc.
Commercial Care Plan Limited
Commercial Credit Land One LLC
Commercial Credit Land Two LLC
Commercial Credit Land Three LLC
Commercial Equity Investments, Inc.
Compass Investimentos e Participacos Ltda.
Concept Automotive Services, Ltd.

Confidential Invoice Discounting Limited
Corral, L.P.
Consorcio Nacional GM Ltda.
Consorcio National Chevrolet s.r.l.
Controladora ACDelco S.a. de C.V.
Controladora General Motors, S.A. de C.V.
Convesco Vehicle Sales GmbH
CoverageOne, Inc.
CoverageOne Purchasing Group, Inc.
CoverageOne Corporation/Compagnie
Protection Premiere
Covisint, LLC
Crash Avoidance Metrics Partnerships
Crystal Ball Holding of Bermuda Limited
Cunningham Motor Company
DAVOne, Inc.
DAVOne, LLC
DCM Investments, Inc.
DEC International, Inc.
DHB America Inc.
DMAX, Ltd.
DP Compressors L.L.C.
DTM, Inc.
DTVI One, Inc.
DTVI Two, Inc.
DTVJ Holdings, Inc.
DWOne, Inc.
Dalameta Limited
Daniels/Florida Automotive Group, LLC
Daystar Properties, Inc.
Dealership Liquidations, Inc.
Delphi Energy and Engine Management Systems
UK Overseas Corporation
Delphi Packard Electric Systems – Venezuela C.A.
Delta Motor Company (Proprietary) Ltd.
Deskom
Detroit Investment Fund, L.P.

Dexter Circle Investors
Digital Media and Communications II L.P.
DIRECTV Customer Services, Inc.
DIRECTV Enterprises, Inc.
DIRECTV, Inc.
DIRECTV Global, Inc.
DIRECTV Global, Inc. (1)
DIRECTV Global Digital Media, Inc.
DIRECTV International, Inc.
DIRECTV Japan Kabushiki Kaisha
(aka DIRECTV Japan, Inc.)
DIRECTV Kabushiki Kaisha
DIRECTV Latin America, LLC
DIRECTV Latin America Holdings, Inc.
DIRECTV Merchandising, Inc.
DIRECTV Operations, Inc.
Dish Placement Services
ditech.com, Inc.
DiTech Escrow Services, Inc.
Doraville Bond Corporation
EDESA Societe Anonyme Holding
EGM Services L.L.C.
ELAZ-GM Corporation
EL-MO Leasing II Corporation
EL-MO Leasing III Corporation
El-Mo-Mex, Inc.
EMD Holding Corporation
East Bay Auto Group, LLC
Eastern Gale, Inc.
Eastern Massachusetts Real Estate, Inc.
Edmun Inc.
Edmund Becker und Co. AG
Elasto S.A.
Electric Scientific, Inc.
Electric Wiring Component Application Partnership
Electro-Motive de Mexico, S.A. de C.V.
Electro-Motive International Corporation

Electro-Motive Maintenance Operations Pty Ltd
Empresa Mixta GEMACVEN, S.A.
Environmental Corporate Remediation Company, Inc.
Escrow Bank USA
Executive Closing Services, Inc.
Executive Trustee Services, Inc.
Expatriate Management Limited
ExpatSpouse Inc.
F.A. Powertrain Italia S.r.l.
F.A. Powertrain Ltda.
F.A. Powertrain Polska Sp.Zo.o
F.M. Steller Audit Services Limited
FMA S.r.l.
FNA Consumer Discount Company
Fabrica Nacional De Autobuses, C.A.
Fairview Terrace Holding Limited
Fiat Auto Holdings B.V.
Fiat – GM Powertrain B.V.
Fiat – GM Powertrain Ltda.
Fiat – GM Worldwide Purchasing B.V.
Financial Network Alliance, L.L.P.
Financiera Auritec, S.A. de C.V.
Fit4Fleet Holdings (UK) Limited
Fit4Fleet Limited
First HNS Mauritius Ltd.
Fisher Body Limited
Flaming Cove Limited
Foreign Obligation Export, Inc.
FOROne, Inc.
Fort Dearborn Land Title Company
Four Party Logistics, LLC
Franklin Drive Investors Limited
Fuji Heavy Industries Ltd.
Fundacion Opel Nueva Empresa
G. & F. Company
GFI Company
GHS Global Relocation U.K. Limited

GHS Metro NY, Inc.
GHS Mortgage, LLC
GHS SW, Inc.
GLA Argentina S.r.L.
GLA Brasil Ltda.
GLA Venezuela, S.r.L.
GLB Ltda.
GM-ARA Industrial Cleaning
GM Auslandsprojekte GmbH
GM Auto Receivables Co.
GM Automotive Services Belgium
GM Automotive UK Limited
GM AutoWorld Korea Co., Ltd.
GM AutoWorld Yugen Kaisha
GM-AVTOVAZ Limited Liability Company
GM Credit AB
GM Defense Middle East Corporation
GM-DI Leasing Corporation
GM DriverSite Incorporated
GM Eurometals, Inc.
GM Europe GmbH (aka GM Europe GmbH Russelsheim)
GM Factoring Sociedade de Fomento Comercial Ltda.
GM-Fiat Worldwide Purchasing do Brasil Betim Ltda.
GM-Fiat Worldwide Purchasing do Brasil
Sao Caetano do Sul Ltda.
GM-Fiat Worldwide Purchasing B.V.
GM-Fiat Worldwide Purchasing Italia S.r.l.
GM-Fiat Worldwide Purchasing Management
Services GmbH
GM-Fiat Worldwide Purchasing Opel Austria GmbH
GM-Fiat Worldwide Purchasing Opel Belgium NV
GM-Fiat Worldwide Purchasing Opel Espana S.L.
GM-Fiat Worldwide Purchasing Opel Germany GmbH
GM-Fiat Worldwide Purchasing Opel Hungary Ltd.
GM-Fiat Worldwide Purchasing Poland Sp.z oo
GM-Fiat Worldwide Purchasing Sweden
GM-Fiat Worldwide Purchasing Vauxhall Motors Ltd.

GM Finance HB
GM GDLS Defense Group, LLC
GM Imports & Trading Ltd.
GM International Sales Ltd.
GM Investment Trustees Limited
GM Investments UK Ltd.
GM Korea Co., Ltd.
GM Leasing S.A. – Arrendamento Mercantil
GM Mergeco Corp.
GM Motor Club, Inc.
GM National Car International, Ltd.
GM Nigeria Limited
GM Personnel Services, Inc.
GM Plats (Proprietary) Limited
GM Powertrain Ltda.
GM-Saab Communication GmbH
GM-UMI Technology Research and Development Ltd.
GM (UK) Pension Trustees Limited
GM Warehousing and Trading (Shanghai) Co. Ltd.
GMAC Arrendamiento S.A. de C.V.
GMAC, a.s.
GMAC, Australia (Finance) Limited
GMAC Auto Lease Payment Corporation
GMAC Automotriz Limitada
GMAC Banque
GMAC Business Credit, LLC
GMAC-CM Funding, LLC
GMAC Comercial Automotriz Chile S.A.
(aka GMAC Chile)
G.M.A.C. – Comercio e Aluguer de Veiculos, Lda.
GMAC Commercial Credit Corporation-Canada/
Societe De Credit Commercial GMAC-Canada
GMAC Commercial Credit Development Limited
GMAC Commercial Credit (GB) Limited
GMAC Commercial Credit Holdings Limited
GMAC Commercial Credit LLC
GMAC Commercial Credit Limited

GMAC Commercial Credit (UK) Limited
GMAC Commercial Credit Pension Trustees Limited
GMAC Commercial Corporation
GMAC Commercial Holding Corp.
GMAC Commercial Holding of Bermuda Limited
GMAC Commercial Holding of Japan, K.K.
GMAC Commercial Mortgage Asset Corp.
GMAC Commercial Mortgage Bank (Ireland), Limited
GMAC Commercial Mortgage Europe SAS
GMAC Commercial Mortgage Japan K.K.
GMAC Commercial Mortgage of Canada, Limited
GMAC Commercial Mortgage of Ireland, Limited
GMAC Commercial Mortgage Corporation
GMAC Commercial Mortgage Resources Canada, Limited
GMAC Commercial Mortgage Saiken Kanri Kaishu, K.K.
GMAC Commercial Mortgage Securities, Inc.
GMAC Commercial Mortgage Servicing
(United Kingdom) Limited
GMAC Commercial Realty, Inc.
GMAC Compania Financiera S.A.
GMAC del Ecuador S.A.
GMAC d.o.o. (incorporated in Croatia)
GMAC d.o.o. (incorporated in Slovenia)
GMAC Direct Insurance Company
GMAC Espana, Sociedad Anonima de
Financiacion, E.F.C.
G.M.A.C. Financiera de Colombia S.A. Compania
de Financiamiento Comercial
GMAC Financiera, S.A. de C.V.
GMAC Finansiering A/S
GMAC Global Relocation Services, Inc.
GMAC Global Relocation Services Limited
GMAC Hipotecaria, S.A. de C.V.
GMAC Holding S.A. de C.V.
GMAC Home Services, Inc.
GMAC Institutional Advisors LLC
GMAC Insurance Holdings, Inc.

GMAC Insurance Company Online, Inc.
GMAC International Corporation
GMAC International Finance B.V.
GMAC Investment Services, Inc.
GMAC Italia Leasing S.p.A.
GMAC Lease B.V.
GMAC Leaseco Limited/GMAC Location Limitee
GMAC Leasing Corporation
GMAC Leasing (U.K.) Limited
GMAC Leasing (U.K.) (No. 1) Limited
GMAC Leasing (U.K.) (No. 2) Limited
GMAC Leasing (U.K.) (No. 3) Limited
GMAC MEXICANA, S.A. de C.V. Sociedad Financiera de Objecto Limitado Filial
GMAC Model Home Finance, Inc.
GMAC Mortgage Asset Management, Inc.
GMAC Mortgage Corporation
GMAC Mortgage Corporation of TN
GMAC Mortgage Group, Inc.
GMAC Mortgage Holdings, Inc.
GMAC Mortgage Investments, Inc.
GMAC Mortgage Securities, Inc.
GMAC Mortgage Securities II, Inc.
GMAC Mortgage Venture II, Inc.
GMAC RE Corp.
GMAC RF, Inc.
GMAC-RFC Auritec, S.A.
GMAC-RFC Brasil, Ltda.
GMAC-RFC Europe Limited
GMAC-RFC Limited
GMAC-RFC Nederland B.V.
GMAC-RFC (UK) Limited
GMAC Rahoitus Oy
GMAC Real Estate, LLC
GMAC Residential Holding Corp.
GMAC Risk Services, Inc.
GMAC Risk Services Insurance Agency, Inc.

GMAC Risk Services of Alabama, LLC
GMAC Risk Services of Georgia, LLC
GMAC Securities Corporation
GMAC Service Agreement Corporation
GMAC Sverige AB
GMAC Taiwan Inc.
GMAC - TCFC Finance Limited
GMAC Trade Finance, Inc.
GMAC Windham International (Asia) PTE LTD
GMACCM Mexico II LLC
GMACRH Settlement Services, Inc.
GMC Truck Motors Development Corporation
GMLG Ltd.
GMOC Administrative Services Corporation
GMOC Australia Pty. Ltd.
GMODC Finance N.V.
GMRH Kansas City, Inc.
GMRH Philadelphia, Inc.
GMRH Pittsburgh, Inc.
GMRH St. Louis, Inc.
GMRH Seattle, Inc.
GMRHLA, Inc.
GSI Lumonics
Galaxy Brasil, Ltda.
Galaxy de Colombia, Ltda.
Galaxy Entertainment de Argentina, S.A.
Galaxy Entertainment de Colombia, S.A.
Galaxy Entertainment Iberoamerica, S.L.
Galaxy Entertainment de Venezuela, C.A.
Galaxy Latin America Investments, LLC
Galaxy Latin America Investment & Company, S. en C.
Gemma Engineering Limited
Genasys L.C.
General Acceptance (Thailand) Ltd.
General Instrument Corporation
General International Insurance Services Limited
General International Limited

General International (UK) Limited
General Magic, Inc.
General Motors Acceptance Corporation
General Motors Acceptance Corporation, Australia
General Motors Acceptance Corporation
of Canada, Limited
General Motors Acceptance Corporation, Colombia S.A.
General Motors Acceptance Corporation, Continental
General Motors Acceptance Corporation
de Venezuela, C.A.
General Motors Acceptance Corporation del Ecuador
S.A. GMAC – Management (Holding)
General Motors Acceptance Corporation Hungary
Commercial Limited Liability Company
General Motors Acceptance Corporation Italia S.p.A.
(aka GMAC Italia)
General Motors Acceptance Corporation Nederland N.V.
(aka GMAC Nederland)
General Motors Acceptance Corporation, North America
General Motors Acceptance Corporation (N.Z.) Limited
General Motors Acceptance Corporation del Peru, S.A.
General Motors Acceptance Corporation de
Portugal – Servicos Financeiros, S.A.
General Motors Acceptance Corporation, S.A. de C.V.
General Motors Acceptance Corporation, South America
General Motors Acceptance Corporation Suisse S.A.
General Motors Acceptance Corporation (U.K.)
Finance plc (aka GMAC UK plc)
General Motors Acceptance Corporation (U.K.) plc
General Motors Acceptance Corporation de
Venezuela, C.A.
General Motors de Argentina S.A.
General Motors Asia, Inc.
General Motors Asia Pacific (Japan) Limited
General Motors Asia Pacific (Pte) Ltd.
General Motors Asia Pacific Holdings, LLC

General Motors Austria Beteligungsgesellschaft m.b.H.
(aka GM Austria)
General Motors Automobiles Philippines, Inc.
General Motors Automotive UK Limited
General Motors do Brasil Ltda.
General Motors of Canada Limited – General Motors
du Canada Limitee
General Motors Cancer Research Foundation, Inc.
General Motors Chile S.A., Industria Automotriz
General Motors China, Inc.
General Motors (China) Investment company Limited
General Motors CIS
General Motors Colmotores, S.A.
General Motors Commercial Corporation
General Motors Coordination Center N.V.
General Motors Corporation
General Motors del Ecuador S.A.
General Motors Egypt, S.A.E.
General Motors Employees Foundation
General Motors Europe AG (aka General Motors Europe)
General Motors Export Corporation
General Motors Finance (Barbados) Ltd.
General Motors Foreign Sales Corporation
General Motors Foundation, Inc.
General Motors GmbH & Co. OHG
General Motors Global Industries Co., Ltd.
General Motors Hellas, A.B.E.E.
General Motors-Holden's Sales Pty. Limited
General Motors Holdings (UK)
General Motors Holding Espana, S.A.
General Motors Holdings UK Unlimited
General Motors Import & Distribution GmbH
General Motors Importaktiebolag
(aka General Motors Import AB)
General Motors India Private Limited
General Motors Indonesia, Inc.
General Motors Interamerica Corporation

General Motors International Operations, Inc.
General Motors Investment Management Corporation
General Motors Investment Services Company N.V.
General Motors Isuzu Commercial Truck, LLC
General Motors Japan Ltd. (trade name:
Nihon General Motors Kabushiki Kaisha)
General Motors Kenya Limited
General Motors Korea, Inc.
General Motors Limited
General Motors Locomotive Group India Limited
General Motors de Mexico, S. de R.L. de C.V.
General Motors Nederland B.V.
General Motors New Zealand Pensions Limited
General Motors Nordiska AB
General Motors Norge AS
General Motors Nova Scotia Finance Company
General Motors Nova Scotia Investments Ltd.
General Motors Overseas Commercial
Vehicle Corporation
General Motors Overseas Corporation
General Motors Overseas Distribution Corporation
General Motors Peru S.A.
General Motors Poland Spolka, zo. o.
General Motors Product Services, Inc.
General Motors Receivables Corporation
General Motors Research Corporation
General Motors Services
General Motors Strasbourg S.A.
General Motors Taiwan Ltd.
General Motors (Thailand) Ltd.
General Motors Trust Company
General Motors Uruguay, S.A.
General Motors U. S. Trading Corp.
General Motors Venezolana, C.A.
General Motors Yugoslavia, trade company
with limited liability
(aka General Motors Yugoslavia d.o.o.)

Genie Mecanique Zairois, S.A.R.L.
Giner Electrochemical Systems, LLC
Glinden Limited
Global Japan Inc.
Globecomm Systems, Inc.
Goldman Agent Private Limited (India)
Grand Pointe Holdings, Inc.
Grupo Galaxy Mexicana, S.R.L. de C.V.
Grupo Mexicana S.A.
HCLS, LLC
HNS-Clairtel GP, Inc.
HNS-India, Inc.
HNS India Private Limited (India)
HNS-India VSAT, Inc.
HNS-Italia S.r.L.
HNS de Mexico, S.A. de C.V.
HNS-Mauritius Holdings
HNS-Shanghai, Inc.
HNS Shared Hub Services, Inc.
HOT Telecommunications, GmbH
HOT Telecommunications Limited
HOT Telecommunications N.V.
HOT Telecommunications S.r.L.
HRL Laboratories LLC
Harvard Industries
Hatwave Hellanic American Telecommunications Wave, Ltd.
Hemisphere I Limited
Hemisphere II Limited
Hero Finance Limited
Hertz Drivurself Corporation
Hibaya Investments, Inc.
Hillbrook Investors, LLC
Hillwell Investments, Inc.
Himawari Investors, Inc.
Hipotecaria Auritec, S.A. de C.V.
Holdcorp S.A.

Holden Ltd.
Holden National Leasing Limited
Holden New Zealand Limited
Holden's Agencies Pty. Limited
HomeAdvisor Technologies, Inc.
HomeComings Financial Network, Inc.
Home Connects Lending Services, LLC
HomeRun, Inc.
Horsham Funding, Inc.
Hughes Aircraft Holdings Canada Ltd.
Hughes-Avicom International, Inc.
Hughes Communications Galaxy, Inc.
Hughes Communications, Inc.
Hughes Communications Satellite Services, Inc.
Hughes do Brasil Electronica e Comunicacoes S.A.
Hughes Electron Dynamics, Inc.
Hughes Electronics Corporation
Hughes Electronics Foreign Sales Corporation
Hughes Electronics International Corporation
Hughes Electronics Japan Kabushiki Kaisya
Hughes Electronics Manufacturing Service Company
Hughes Electronics Realty, Inc.
Hughes Electronics Systems International
Hughes Escorts Communications Limited
Hughes Foreign Sales Corporation
Hughes Global Services, Inc.
Hughes International de Mexico, S.A. de C.V.
Hughes Investment Management Company
Hughes Japan Broadcasting Kabushiki Kaisha
Hughes Japan Investments LLC
Hughes Japan One YK
Hughes-Kenwood RDSS, Inc.
Hughes Network Systems Europe, S.r.L.
Hughes Network Systems France S.a.r.L.
Hughes Network Systems International Service Company
Hughes Network Systems Limited
Hughes Software Systems Limited

Hughes Space Systems International, Inc.
Hughes Tele.com (India) Limited
Hughes Telecommunications & Space Company
Hydrogenics Corporation
IBC Pension Trustees Limited
IBC Vehicles (Distribution) Limited
IBC Vehicles Limited
IFOnline Limited
ISF Internationale Schule Frankfurt
Geschaeftsfuehrungs GmbH
ISF Internationale Schule Frankfurt GmbH & Co. KG
Imperial Japan Investments, Inc.
Independent Mortgage Collection Ltd.
Indus, Inc.
Industries Mecaniques Maghrebines, S.A.
Integon Casualty Insurance Company
Integon Corporation
Integon Corporation II
Integon Equipment Leasing, L.L.C.
Integon Foundation, Inc.
Integon General Insurance Corporation
Integon Home Office Building, L.L.C.
Integon Indemnity Corporation
Integon National Insurance Company
Integon Preferred Insurance Company
Integon Re (Barbados), Limited
Integon Services Company
Integon Specialty Insurance Company
Interactive Distance Learning, Inc.
Interleasing Limited
Interleasing (UK) Limited
Interleasing (UK1) Limited
Interleasing (UK2) Limited
Interleasing (UK3) Limited
Interleasing (UK12) Limited
Inversiones 252-29, C.A.
Inversiones 284297, s.r.l.

Isuzu Bus Building Company
Isuzu Credit Service Co., Ltd.
Isuzu-General Motors Australia Limited
Isuzu Motors Limited
JAN International, Inc.
JVP Holding BV
Jacksonville Saturn, Inc.
Japan Asset Management and Investment Corporation
Japan Auto Service Co., Ltd.
Jennings Motors, Inc.
Jessups Vehicle Contracts
Jinbei GM Automotive Co. Ltd.
Kabushiki Kaisya DIRECTV
KBOne, Inc.
KBMex, Inc.
Kellerton Corp. (BVI)
Kensington Group PLC
Koenig & Strey, Inc.
Koenig & Strey Insurance Agency, Inc.
Koenig & Strey Mortgage Services, Inc.
Koneyren, Inc.
Kosumosu Ventures, Inc.
LDG Acquisition Corporation
Ladue Associates, Inc.
Lease Asset Trading, LLC (1999-A)
Lease Auto Receivables, Inc.
Lennar Partners, Inc.
LENOne, Inc.
Lenora Place Investors Limited
LEVOne, Inc.
Lidlington Engineering Company, Ltd.
Locomotive Leasing Partners, L.L.C.
Lower St. Croix Marketing Company, Inc.
L-T Ranches, Inc.
Macuilli Calpulli, Resolucion de Cartera,
S. de R.L. de C.V.
Madison II Ventures LLC

Magnum Investments, Inc.
Majestic Investments, Inc.
Mammoth Investments, Inc.
Master Lease Austria GmbH
Master Lease Germany GmbH
Master Lease Gesellschaft m.b.H.
Matacte Calpulli, Resolucion de Cartera,
S. de R.L. de C.V.
MCA Finance Limited
McCracken Financial Software of Ireland, Limited
MDP, Ltd.
MIC General Insurance Corporation
MIC Life Insurance Corporation
MIC Property and Casualty Insurance Corporation
MITA Investments, Inc.
MLS USA, Inc.
MRP Service Agreement Corporation
McCracken Financial Software, Inc.
Mechanical Breakdown Insurance Management Limited
Medical Science Partners II
Melrose Place Limited
Mercer Lane Investors Limited
Metal Casting Technology, Inc.
Mexico II LLC
Millbrook Land and Co., Ltd.
Millbrook Pension Management Ltd.
Millbrook Proving Ground, Ltd.
Morrell & Associates, Inc.
Mortgage Assets Trading, Inc.
MortgageRamp.com Inc.
Motient Corporation
Motor Enterprises, Inc.
Motors Holding San Fernando Valley, Inc.
Motors Insurance Company Limited
Motors Insurance Corporation
Motors Insurance Corporation of Michigan
Motors Insurance Purchasing Group, Inc.

Motors Mechanical Reinsurance Company, Limited
Motors Trading Corporation
MOWAG Motorwagenfabrik AG
MRP Service Agreement Corporation
Mt. View Investors
Multiple Dealerships Holdings of Albany, Inc.
NAVCO Corp.
National Automated Highway Systems Consortium
National General Assurance Company
National General Insurance Company
National General Marketing, Inc.
Natural Gas Vehicles Research Partnership
Naui Calpulli, Resolucion de Cartera, S. de R.L. de C.V.
NetSat Express, Inc.
Net/36, Inc.
NeTune Communications, Inc.
New-Cen Commercial Corporation
New Cure, Inc.
Newman Capital II LLC
New South Insurance Company
New United Motor Manufacturing, Inc.
New Venture Gear, Inc.
Newman Capital LLC
Newman Financial Services, Inc.
Newman & Associates, Inc.
NGIC Insurance Services, Inc.
Nippon Avionics Co., Ltd.
Nippon Property Management
North American New Cars, Inc.
Nouvell Societe Financiere Bazin SARL, a Frence
Societe a Responsibilite Limitee
Novel, Inc.
Nuvell Credit Corporation
Nuvell Financial Services Corp.
Occupant Safety Research Partnership
OEConnection LLC
OEConnection Manager Corp.

Olive Way Investors Limited
Olympia Capital ASA
Ome Calpulli, resolusion de Cartera, S. de R.L. de C.V.
Ome Calpulli, Resolucion de S. de R.L. de C.V.
Omnibus BB Transportes, S.A.
On:Auto Finance Limited
On:Fleet Limited
OnGuard Insurance Services Limited
On:Line Finance Ltd.
On:Line Finance Holdings Limited
OnServicing Limited
OnStar Corporation
One Touch Systems, Inc.
Opel Austria FG Powertrain GmbH
Opel Austria Powertrain GmbH
Opel Austria Vertrieb GmbH
Opel-Automobilwerk Eisenach-PKW GmbH
(aka Opel-AWE GmbH)
Opel Bank GmbH
Opel Bank, S.A.
OPEL Bankgesellschaft m.b.H.
Opel Bank Hungary Reszvenytarsasag
Opel Belgium N.V.
Opel C&S spol.s.r.o.
Opel Diesel & Kornponenten
Opel Eisenach GmbH
Opel Espana de Automoviles, S.A.
Opel France S.A.
OPEL Guangzhou Precision Machining Co. Ltd.
Opel-Haendler Versicherungsdienst GmbH
Opel Hellas S. A.
Opel Hungary Automotive Manufacturing Limited
Liability Company
Opel Hungary Consulting Service Limited
Liability Company
Opel Hungary Powertrain Ltd.
Opel International GmbH

Opel Ireland Limited
Opel Italia S.p.A.
Opel Leasing GmgH & Co. OHG
Opel Leasing Verwaltungs GmbH
OPEL Leasinggesellschaft m.b.H.
OPEL Leasing Holding Gesellschaft mbH
Opel Live GmbH
Opel Masterlease GmbH
Opel Motoren Kaiserslautern GmbH
Opel Nederland B.V.
Opel Oy
Opel Performance Center GmbH
Opel Polen GmbH
Opel Polska sp. zoo
Opel Portugal – Comercio e Industria de Veiculos S.A.
Opel Powertrain Holding B.V.
Opel Restrukturierungsgesellschaft mbH
Opel Southeast Europe Automotive Distribution
Limited Liability Company
Opel Special Vehicles GmbH
Opel Suisse SA
Opel Turkiye Limited Sirketi (aka Opel Turkey)
Opel Wohnbau GmbH
Operadora Auritec, S.A. de C.V.
Orient Beach, Inc.
Otemachi Investments, Inc.
PFG Holdings Corp.
PIMS Co.
P. T. GM AutoWorld Indonesia
P. T. GMAC Lippo Finance
P. T. General Motors Indonesia
PT Hughes Network Systems (Indonesia)
P. T. Mesin Isuzu Indonesia
PDES, Inc.
PT. Pasifik Satelit Nusantara
PTC Holdings B.V.
Pacific Stream KK

Pacific Union Real Estate Group, Ltd.
Pacific Willow, Inc.
Pacific Willow Ventures, LLC
Packard CTA Pty. Ltd.
Packard Electric Ireland Limited
PanAmSat Africa (Proprietary) Ltd.
PanAmSat Asia Carrier Services, Inc.
PanAmSat Asia (Hong Kong) Limited
PanAmSat Asia Pty. Ltd.
PanAmSat Capital Corporation
PanAmSat Carrier Services, Inc.
PanAmSat Communications Carrier Services
PanAmSat Communications Carrier Services, Inc.
PanAmSat Communications Japan, Inc.
PanAmSat Communications Services, Inc.
PanAmSat Corporation
PanAmSat Europe Limited
PanAmSat FSC Incorporated
PanAmSat India, Inc.
PanAmSat International Employment, Inc.
PanAmSat International Holdings, Inc.
PanAmSat International Limited
PanAmSat International Sales, Inc.
PanAmSat International Systems, Inc.
PanAmsat International Systems, LLC
PanAmSat International Systems Limited
PanAmSat Korea
PanAmSat Licensee Corp.
PanAmSat Mexico, Inc.
Pan Asia Technical Automotive Center Company, Ltd.
Paramount Financial Group, Inc.
Pardo Rabello Inversionnes, S.A.
Parkside Boulevard Limited
PAROne, Inc.
Passive Asset Transactions, Inc.
Patlan Corporation
Pine Properties, Inc.

Planet Communications, Inc.
Powertrain Industrial Services S.c.r.l.
Powertrain Mekanik Sanayi ve Ticaret Limited Sirketi
Premier Asset Management Company
Premier Investment Group, Inc.
Primestar, Inc.
Private Label Group Limited
Private Label Mortgage Services Ltd.
ProSTEP GmbH
Pyxis Capital, Inc.
Qual-Effic Services, Inc.
RFC Asset Holdings, Inc.
RFC Asset Holdings II, Inc.
RFC Construction Funding Corp.
RFC Investments Limited
RFC International Limited
RFC (Ireland) Limited
RFC Mortgage Services Limited
R. L. Autoguard (1982) Limited
RMAC 1999 – NS1 PLC
RMAC 1999-NS2 PLC
RMAC 2000-NS1 PLC
RMAC 2000-NS2 PLC
RMAC 2000-NS3 PLC
Radiadores Richard S.A.
Rapide Mortgage Services Limited
Realty Services International, Inc.
Referral Network of GHS SW, Inc.
Referral Network of GHS Metro NY, Inc.
Referral Network of IL, Inc.
Referral Network of Koenig & Strey, Inc.
Referral Network of Massachusetts, Inc.
Referral Network of NY/NJ, Inc.
Regal Investments, GP
Regal Investments, Inc.
Remediation And Liability Management Company, Inc.
Renaissance Center Management Company

Representaciones Auritec, S. A.
Republic Realty Mortgage Corporation
Residential Accredit Loans, Inc.
Residential Asset Securities Corporation
Residential Asset Mortgage Products, Inc.
Residential Consumer Services of Alabama, Inc.
Residential Consumer Services, Inc.
Residential Consumer Services of Ohio, Inc.
Residential Consumer Services of Texas, Inc.
Residential Funding Corporation
Residential Funding Mortgage Exchange Corporation
Residential Funding Mortgage Securities I, Inc.
Residential Funding Mortgage Securities II, Inc.
Residential Funding Securities Corporation
Residential Investment Funding Corporation
Residential Money Centers, Inc.
RHOne, Inc.
Ridge View Investors Limited
Riverfront Development Corporation
Riverfront Holdings, Inc.
Riverfront Holdings Phase II, Inc.
Robotic Vision Systems, Inc.
Rock Hall, Inc.
Rose, Louis Buick Company
Ruedas de Aluminio, C.A.
RxNetwork LLC
Saab Auto Lease Co. LLC
Saab Automobile AB
Saab Automobile KB
Saab Automobile Investering AB
Saab Automobile Limited Partners KB
Saab Automobile Powertrain AB
Saab Cars Direct Sales Corp.
Saab Cars Holdings Corp.
Saab Card Holdings Overseas Corp.
Saab Cars USA, Inc.
Saab Financial Auto Receivables Corp. III

Saab Financial Services Corp.
Saab Funding L.P. (SELP)
Saab GP L.L.C.
Saab Leasing Co.
Saab Opel Sverige AB
SA Holding One LLC
SA Holding Two LLC
Salem Underwritters, LLC
Samida Pty Ltd
San Fernando Valley Automotive, LLC
SANTA Guarantor, Ltd.
Satelites de Puerto Rico Ltd.
Satelitron S.A. de C.V.
Saturn Bay Body Shop, LLC
Saturn Corporation
Saturn County Bond Corporation
Saturn Development I, LLC
Saturn Development North, LLC
Saturn Distribution Corporation
Saturn of Hawaii, LLC
Saturn Paint and Body Shop of South California, LLC
Saturn Retail Company of Tennessee, Inc.
Saturn Retail Enterprises, Inc.
Saturn Retail of Arizona, Inc.
Saturn Retail of California, Inc.
Saturn Retail of Charleston SC, LLC
Saturn Retail of Charlotte NC, LLC
Saturn Retail of Connecticut, Inc.
Saturn Retail of Florida, Inc.
Saturn Retail of Illinois, LLC
Saturn Retail of Long Beach CA, LLC
Saturn Retail of Michigan, Inc.
Saturn Retail of Minnesota, Inc.
Saturn Retail of New Hampshire, Inc.
Saturn Retail of New York, Inc.
Saturn Retail of North Carolina, LLC
Saturn Retail of North Florida, Inc.

Saturn Retail of North Texas, Inc.
Saturn Retail of Pennslyvania, Inc.
Saturn Retail of Raleigh NC, LLC
Saturn Retail of Southeast Florida, Inc.
Saturn Retail of South California, Inc.
Saturn Retail of South California, LLC.
Saturn Retail of South Carolina, LLC
Saturn Retail of South Florida, Inc.
Saturn Retail of South Texas, Inc.
Saturn Retail of Texas, Inc.
Seika Investments Corporation
Servicos Corporativos Auritec, S.A. de C.V.
Servicios GMAC S.A. de C.V.
Servicos Galaxy Sat III R.C.A.
Servicios, Representation y Asesoramiento de Personal Persoserv
Shanghai General Motors Corporation Ltd.
Shanghai Hughes Network Systems Co., Ltd.
Silver Cove Limited
Sistemas de Compra Programada Chevrolet, C.A.
Sistemas Para Automotores de Mexico, S. de R.L. de C.V.
Sky Perfect Communications, Inc.
Smart Coverage Insurance Agency Inc./Agence D'Assurance Protectionavisee Inc.
Smith/Florida Group, LLC
Spartacus Properties, Inc.
Sociedad de Comercializacion Internacional Colmotores S.A.
Sonera
Southern Satellite Corporation
Southern Satellite Licensee Corporation
Sports Acquisition Ltd.
Sports Acquisition (U.S.), Inc.
Standard Leasing Motors
Starmax Investors LLC
Structured Asset Notes Transactions, Ltd.
Structured Asset Notes Transactions II, Ltd.

Structured Asset Notes Transactions III, Ltd.
Subaru-Isuzu Automotive, Inc.
Summit Crest Ventures, LLC
Supercomputer Automotive Applications Partnership
Super Digital Broadcasting, Inc.
SurFin Ltd.
Sutter Hill Investments Mauritius Ltd.
Suzuki Motor Corporation
Sydney Investments, Y.K.
Tanner Investors, Inc.
Tanner Investor LLC
Tanner Investor Owner LLC
Technologies for Information & Entertainment III, L.P.
Teknowledge
Tai Jin International Automotive Distribution Co., Ltd.
The Winston-Salem Downtown Center, Inc.
THOMSON Multimedia S.A.
TiVo Inc.
Tiwa International, Inc.
TOLOne, Inc.
Toshiba America Venture Capital
Tralee Venture LLC
TRIADvantage Credit Services, Inc.
Trinity General Agency, Inc.
Truck and Bus Engineering U.K., Limited
Tucker Investors, LLC
TV Capital Participacoes Ltda.
TV Nacional Participacoes Ltda.
TVA Banda C Ltda.
TX Holdco, LLC
U.S. Council for Automotive Research
USSB II, Inc.
USHI, Inc.
Ukrainian Wave Ltd.
Union Trust Mortgage Services, Inc.
Universal Motors Israel Ltd.
Universal Warranty Corporation

Univest Financial Services, LLC
United Australian Automotive Industries Limited
United States Advanced Battery Consortium
United States Automotive Materials Partnership
Uveral S.A.
VHC Sub-Holdings (UK)
Valley Drive Investors Limited
Vauxhall Engineering Centre Limited
Vauxhall Motors (Finance) Plc
Vauxhall Motors Limited
Vauxhall Powertrain Ltd.
Vauxhall Properties Limited
Vector SCM, LLC
Vedarius Limited
Vehicle Guarantees Limited
Vehicle Recycling Consortium
Verinet
Verona Place Limited
Via Digital DTS, Distribuidos de Television Digital, S.A.
Vordafex do Brasil LTDA
Walnut Grove Funding, Inc.
Watercrown Investments, LLC
WESTPACOne, Inc.
WESTPACTwo, Inc.
WRE, Inc.
White Holding, B.V.
Wholesale Auto Receivables Corporation
Wimbly Investors LLC
Wimbly Ventures, Inc.
Windham Consulting International, Inc.
Wink Communications, Inc.
WPSH, Inc.
Wonder Wave, Inc.
Woodhaven Ventures LLC
XMC Holdings, Ltd.
XM Satellite Radio Holdings, Inc.
Ye Calpulli, resolucion de Cartera, S. de R.L. de C.V.

Yenco, Inc.
Yurakucho Invetments, Y.K.
Zhejiang Delphi Asia Pacific Brake Co., Ltd.

PETITIONER:

DaimlerChrysler Corporation

Parent: DaimlerChrysler North American Holding Corp.

Subsidiaries:

6353 Sunset Boulevard, Inc.
AEG Automation Systems Holding Company
AEG Corporation
Aero Products Corporation
AIA, Inc of Pennsylvania
American Auto Receivables Company
American La France Corporation
American Motors Pan American Corporation
Artesia Turbine Cogeneration Corp
Atlanta Freightliner Truck Sales & Services
Auto Testing Company, Inc.
Automotive Exporters, Inc.
Baltimore Compost I Corporation
Baltimore Compost II Corporation
BYC Acquisition Corporation
CC Funding Corporation
Chrysler Asset Management Corporation
Chrysler Auto Receivables Company
Chrysler Cadre Inc.
Chrysler Capital Financing Corporation
Chrysler Capital Public Finance Corporation
Chrysler Capital Realty, Inc.
Chrysler Capital Transportation Services, Inc.
Chrysler Credit Realvest, Inc
Chrysler Dunwoody Inc.
Chrysler Financial Financing Corporation

Chrysler Financial Receivables Corporation
Chrysler Insurance Company
Chrysler International Corporation
Chrysler International Services, S.A.
Chrysler Leasing Corporation
Chrysler Meadowcroft Corporation
Chrysler Meridian Corporation
Chrysler Realty Corporation
Chrysler Technologies Middle East, Ltd.
Chrysler Timberlake Corporation
CLG Media, Inc.
Clinton Holdings Corporation
Cms Environmental, Inc.
Conemaugh Hydroelectric Projects, Inc
Cross Road Chrysler-Plymouth, Inc
Crossroads Dodge, Inc.
DAF Investments, Ltd.
Daimler-Benz Auto Receivables Corporation
Daimler-Benz Investments, Inc.
Daimler-Benz Purchasing Coordination of North America, Inc.
Daimler-Benz Services & Investment Co., Inc.
Daimler-Benz Technology Corporation
Daimler-Benz Vehicle Receivables Corp.
Daimlerchrysler Aerospace of NA, Inc.
Daimlerchrysler Aviation, Inc.
Daimlerchrysler Corporate Services, Inc.
Daimlerchrysler Corporation
Daimlerchrysler Intellectual Capital Corporation
Daimlerchrysler Motors Corporation
Daimlerchrysler North America Finance Corporation
Daimlerchrysler Research and Technology North America, Inc.
Daimlerchrysler Service Contracts, Inc.
Daimlerchrysler Technologies, Inc.
Daimlerchrysler Transport, Inc.
DASA Globalstar Ltd Partner, Inc.

DDC UAW Child Development Center, Inc.
DDR Holdings Corporation
Dealer Capital, Inc.
Debis Financial Services, Inc.
Debis It Services North America, Inc.
Detroit Diesel Capital Corporation
Detroit Diesel Corporation
Detroit Diesel Credit Corporation
Detroit Diesel of Canada, Ltd.
Detroit Diesel Overseas Corporation
Detroit Diesel Overseas Distribution Corporation
Detroit Diesel Realty Utah
Detroit Diesel Realty, Inc.
Detroit Diesel Remanufacturing Corporation
Detroit Diesel Remanufacturing-East, Inc.
Detroit Diesel Remanufacturing North, Inc.
Detroit Diesel Remanufacturing-Central, Inc.
Detroit Diesel Remanufacturing-West, Inc.
Detroit Diesel Specialty Tool Company, Inc.
Diesel Project Development, Inc.
DLI Corporation
Dodge of Pompano Beach, Inc.
Dodge of Shakopee, Inc.
Downriver Dodge Inc.
E.F.H. Leasing Corporation
East Tulsa Dodge, Inc.
EPC Corporation
Florida Detroit Diesel-Allison, Inc.
FMDC Canada, Inc.
Fourfold Cogeneration Corporation
FPB California Cogeneration Corporation
Freightliner Corporation
Freightliner Custom Chassis Corp.
Freightliner Market Development
Freightliner of Southern Alabama, Inc.
Freightliner Trucks of South Florida, Inc.
Fresno Biomass Power Corporation

Giggo.Com
Goldsboro Chrysler Dodge Jeep, Inc.
Green Bay Chrysler, Inc.
Harper Lake Solar IX Corporation
Hawaii Detroit Diesel-Allison, Inc.
HCCF Corporation
HLLSLC Corporation
HLSP IX, Inc
Intrepid Insurance Company
Jasmin Eor Cogeneration Corporation
K.C.S.I., Inc.
Keystone Freightliner, Inc.
Kingswood Chrysler-Plymouth, Inc
Kirkland CPJE, Inc.
Klair, Ltd
La Brea Avenue Motors, Inc
Lancaster Chrysler Plymouth, Inc
Laurissa 85 Corporation
Lee County Chrysler-Jeep, Inc.
Lexington Park Motors
Long Beach Chrysler-Jeep, Inc.
Mall Road Chrysler-Plymouth, Inc.
Marisa, Inc.
Mercedes-Benz Advanced Design of North America, Inc.
Mercedes-Benz Credit Corporation
Mercedes-Benz Latina, Inc.
Mercedes-Benz Manhattan, Inc.
Mercedes-Benz Service Corporation
Mercedes-Benz Services International, Inc.
Mercedes-Benz U.S. International, Inc.
Mercedes-Benz USA, Inc.
Metro Dodge, Inc.
Mexico Detroit Diesel – Allison
Midfield Dodge Inc.
MTU of North America, Inc.
MVSA Company, Inc.
Niagara Turbine Cogeneration Corp.

North West Dodge, Inc.
OMC Acquisition Corporation
Orion Bus Industries, Inc.
Ormesageo 1E Geothermal Corporation
Outer Drive Holdings-North, Inc.
Outer Drive Holdings, Inc.
Pacific DDA Holdings, Inc.
Pasadena Dodge, Inc.
Pentastar Insurance Agency, Inc
Performance Dodge, Inc.
Portland Freightliner, Inc.
Poso Eor Cogeneration Corporation
Premier Auto Receivables Company
Remarketing Services of America, Inc.
Rincon Mac Nally Corporation
Rocklin Biomass Power Corporation
Ross Park Dodge, Inc
Setra of North America, Inc.
Southland Chry-Ply Jeep-Eagle, Inc.
Sovereign Crest Properties, Inc.
Sterling Truck Corporation
Stillwater Geothermal Corporation
Stone Mountain Chrysler Jeep, Inc.
Stoneridge Motors Chry-Ply Jeep Eagle, Inc.
Suffolk Leasing Inc.
Tar Heel Sterling Truck Center
Technology Asset Management, Inc.
Temic Automotive of North America, Inc.
Thomas Built Buses, Inc.
Toquam Properties, Inc.
Trona Cogeneration Corporation
Upper Darby Chrysler Plymouth, Inc.
US Auto Receivables Company
VM Holding, Inc.
Webster Chrysler Jeep, Inc
Western Star Holdings, Inc.
Western Star Truck Sales, Inc.

Western Star Trucks Corporation
Western Star Trucks Us, Inc.
Whitewater Holdings, Inc.
Williams & Lane Energy, Inc.
Zionsville Chrysler Jeep, Inc.